

MODERN POLITICAL CONSTITUTIONS

AN INTRODUCTION TO THE COMPARATIVE STUDY
OF THEIR HISTORY AND EXISTING FORM

BY

C. F. STRONG, M.A., PH.D.

REVISED AND ENLARGED EDITION

LONDON
SIDGWICK & JACKSON, LTD.
44, MUSEUM STREET, W.C.1

1939

•

“ Every creation of a new scheme of government is a precious addition to the political resources of mankind. It represents a survey and scrutiny of the constitutional experience of the past. It embodies an experiment full of instruction for the future.”

LORD BRYCE.

•

PREFACE TO THE FIRST EDITION

THIS book was written to meet a need felt by many setting out for the first time upon the study of constitutional politics as a specialised branch of historical studies—the need of a suitable introductory text-book. It was my business and pleasure, during several years, to help students to face without undue trepidation the difficulties of their first approach to Political Science. Here is one part at least of the fruit of my experience with them, and if I dedicated this book to any one it would be to those who, by their constant devotion in my classes and lectures, made light the heavy labour of preparing and presenting a difficult, though entrancing, subject.

The book is designed to appeal not only to those who enjoy the advantage of a teacher, but to the private student and the general reader. It is hoped that the select readings, the list of books for further study, and the subjects for essays at the end of each chapter will aid a fuller inquiry and at the same time stimulate thought.

My debt to the giants of Political Science—Lord Bryce, Woodrow Wilson, Professor Dicey and the rest—will be apparent throughout to those who know anything of their superb writings, and if my book did nothing else than send a few students to a more reasoned study of the works of those great men, I should be satisfied. This book, however, is by no means a digest or *réchauffé* of the books of those authors, but an attempt to present the subject (which, after all, is everybody's business) in an original, readable and easily comprehensible form.

I hesitate to mention the names of those whose encouragement and advice made the completion of the book possible

lest any of them should be regarded as sharing even a fraction of the responsibility for its many weaknesses or mistakes, of which I am all too conscious ; that responsibility is wholly and without qualification mine. Yet I cannot refrain from recording my thanks to Professor F. J. C. Hearnshaw, my old teacher, who read and criticised the book in its early stages ; to Professor H. J. Laski, who placed his unrivalled knowledge ungrudgingly at my disposal ; to Mr. Philip Guedalla, who spurred me when my writing spirit flagged ; to Dr. F. A. Hedgcock for his very practical kindness ; to my publishers for their unfailing courtesy and help ; and finally to my wife, always my acutest and most constructive critic.

It is my hope to produce later on, when leisure permits, a companion volume, dealing in a similar introductory manner with Political Ideas. Meanwhile, I trust this book will prove of use to all those who believe that our true welfare depends upon an informed citizenship.

C. F. STRONG.

LONDON,
March, 1930.

PREFACE TO NEW EDITION

THE purpose and method of this book, which was first published in 1930, are perhaps sufficiently indicated in its title and subtitle: modern political constitutions, an introduction to the comparative study of their history and existing form. We set out to study some highly organised modern states and to examine their institutions, which, taken together in each case, are called the constitution, defined by Lord Bryce as "a frame of political society organised through and by law." After giving, in Chapter 1, a series of definitions of the principal terms used in such a study and in Chapter 2 a historical sketch of the growth of modern Western political constitutionalism, we outlined in Chapter 3 a new method of classifying modern constitutions, according to their likenesses and differences in respect of certain attributes, which we found to be workably summarised under the following five heads: (1) the nature of the state to which the constitution applies—*i.e.* whether unitary or federal; (2) the nature of the constitution itself—*i.e.* whether flexible or rigid; (3) the nature of the legislature—*i.e.* whether elected by manhood or adult suffrage, whether in single or multi-member constituencies, and, in respect of the second chamber, whether elective or non-elective; (4) the nature of the executive—*i.e.* whether parliamentary or non-parliamentary; (5) the nature of the judiciary—*i.e.* whether subject to the rule of law (in common law states) or under administrative law (in prerogative states). The remaining chapters of the book were concerned with a further discussion of each of these characteristics of constitutional states comparatively treated on this basis, concluding with certain additional considerations, including a study of the constitution of the League of Nations.

Now, in considering how most usefully and helpfully to revise such a book for a new edition, one may be too readily influenced by the impression, easily engendered in the mind of the student of affairs, of a general decline and discrediting of democratic methods of government throughout the world during the decade of disaster which has elapsed since this book was written. Indubitably a great deal of revolutionary water has flowed under the constitutional bridge since this book was published in 1930. There has undoubtedly been a growing apostasy from the promise of post-War political development based on the twin principles of nationality and representative democracy. In the years immediately following the War many new fields in Europe seemed rich with the corn of political constitutionalism, as we know it in Britain, but in many of these fields the harvest has not been gathered and the work of the sowers has been vitiated by the hands of the reapers.

The most marked example of this falling away from the path of political constitutional progress is, of course, to be found in Germany. In 1930 we were able to include Germany in a "constitutional block," and it is a highly significant fact that in all the 350 pages of this book, published in that year, there is not one reference to Adolf Hitler, for it was not until 1933 that he reached effective political power and changed the whole current of post-War political growth in Germany. Italy, on the other hand, had already set out upon her anti-democratic journey. At that time, however, the future of the Corporative State was doubtful, and it was by no means clear how far the Fascist régime would go in its apparent determination to kill and bury the Parliamentary democracy which had been born in Italy in 1848 and which, having survived a somewhat rickety childhood, appeared to have reached a fairly sturdy manhood by the outbreak of the Great War. But it would now appear that the passage of time has only strengthened the hold of the Fascist Dictatorship, built up a powerful socio-political edifice on the foundations which were being laid when this book was first written, and spread the doctrine of the Corporative State to every corner of the land and to every activity of the Italian people.

Again, the so-called totalitarian régimes in Italy and Germany have, by their example and interference, had a marked effect on some of the smaller states of Europe, on the one hand encouraging the development of incipient dictatorships and on the other stifling the urge towards the maintenance or strengthening of democratic institutions. Moreover, the advance of dictatorships in Germany and Italy has brought in its train the all-but-complete destruction of that international constitutionalism which was exemplified by the institution and growth of the League of Nations.

Nevertheless, in spite of these apostasies, democratic constitutionalism maintains itself in Britain, in the Self-Governing Dominions of the British Commonwealth, and in the United States. It keeps its hold, too, in several states of Continental Europe, vigorously in the Scandinavian countries, in the Netherlands, and in Switzerland; with rather less vigour perhaps in France, Belgium, and Finland. Indeed, in studying in 1939 the text of this book as it was written ten years before, it is astonishing to find how much of it still holds true. This being the case, it is felt that the best way of revising it is to leave the text as it was first published, but to bring the matter up to date, first, by means of a survey in a new Introduction dealing with the principal constitutional changes that have come about during the period under review, and, secondly, by a series of notes at the end of the book, marking the text at appropriate points by consecutive numbers referring to the notes, numbered in the same way.

The preparation of this new Edition, after the lapse of ten crowded years since the original text was written, has been a formidable task, which I could scarcely have contemplated, much less accomplished, without the ready help and sympathy of others. I wish particularly to record my thanks to Dr. H. Finer, Reader in Public Administration in the University of London, whose book, *Mussolini's Italy*, is indispensable to the student of Italian politics since the War, and whose knowledge of the whole subject of Constitutions is deep and wide, for so kindly reading and criticising the Introduction. I want also to express my indebtedness to my colleague, Mr. W. J.

Bennett, Librarian of the Borough of Tottenham, for his generous help with books ; to my friend, Mr. C. L. Dering, for his assistance with the proofs ; to my wife, still my most helpful critic ; finally to my publishers and particularly to Mr. Frank Sidgwick, whose technical knowledge and scholarly guidance lightened the burden of producing this new Edition and whose untimely death has deprived the author of this book, in common with countless others, of a charming colleague and a true friend whose place can never be filled.

C. F. STRONG.

LONDON,
August, 1939.

CONTENTS

	PAGE
BOOKS RECOMMENDED (<i>Published before 1930</i>) . . .	XV
* * * <i>At the end of each Chapter a list of books relating to the matter of the Chapter itself is given, together with suggestions of subjects for Essays.</i>	
See note on page xv	
INTRODUCTION TO NEW EDITION . . .	xix
BOOKS FOR FURTHER STUDY (<i>Published since 1930</i>) . . .	lv

PART I

THE SCIENTIFIC AND HISTORICAL APPROACH TO THE SUBJECT

CHAPTER I

THE MEANING OF POLITICAL CONSTITUTIONALISM . . .	I
Introductory (1)—Society (2)—The State (3)—Law and Custom (4)—Sovereignty (5)—Government (6)—The Legislature (7)—The Executive (8)—The Judiciary (9)—The Constitution (10)—The Constitutional State (11).	

CHAPTER II

THE ORIGIN AND GROWTH OF THE CONSTITUTIONAL STATE .	14
Introductory (14)—Greek Constitutionalism (15)—The Roman Constitution (18)—Constitutionalism in the Middle Ages (23)—The Renaissance State (27)—Constitutionalism in England (29)—The Constitutional Influence of the American War of Independence and the French Revolution (34)—Nationalism and Liberal Reform (39)—National Constitutionalism in the Second Half of the Nineteenth Century (43)—Constitutionalism and the Great War (45)—Summary (48).	

PART II

COMPARATIVE CONSTITUTIONAL POLITICS

CHAPTER III

CLASSIFICATION OF CONSTITUTIONS	55
The Obsolete Classification of Aristotle and Others (55)—The Bases of a Modern Classification (58)—The Nature of the State	

to which the Constitution applies (60): *Whether Unitary or Federal*—The Nature of the Constitution Itself (63): (a) *Whether Unwritten or Written a False Distinction*; (b) *Whether Flexible or Rigid*—The Nature of the Legislature (65): (a) *As to the Electoral System*; (i) *Kind of Franchise*, (ii) *Kind of Constituency*; (b) *Types of Second Chamber*—The Nature of the Executive (68): *Whether Parliamentary or Non-Parliamentary*—The Nature of the Judiciary (71): *Whether subject to Rule of Law or under Administrative Law*—Summary (73).

CHAPTER IV

THE UNITARY STATE 76

Sovereignty, Internal and External (76)—The Process of State Integration (79)—The Essential Quality of the Unitary State (80)—The Historical Unitarianism of the United Kingdom (82)—Examples of Unitary States among British Self-Governing Dominions (87): (a) *New Zealand*; (b) *The Irish Free State*; (c) *The Union of South Africa*—The Unitary State of France (91)—The Cases of Italy and Jugo-Slavia (93): (i) *Italy*; (ii) *Jugo-Slavia*.

CHAPTER V

THE FEDERAL STATE 98

The Essential Character of a Federal State (98)—Variations of the Federal Type (100)—The Federal System in the United States of America (103)—The Swiss Confederation (107)—The Commonwealth of Australia (110)—The Modified Federalism of the Dominion of Canada (113)—The Special Case of the New German Republic (117)—Federalism in Latin America (120).

CHAPTER VI

THE FLEXIBLE CONSTITUTION 124

General Remarks (124)—The Nature of Law (127)—The True Character of a Flexible Constitution (129)—Growth of the Flexible Constitution of Great Britain (132)—The British Constitution at Work (136)—The Flexible Constitution of New Zealand (139)—The Flexible Constitutions of Italy and Finland (141).

CHAPTER VII

THE RIGID CONSTITUTION 145

Special Machinery for Constitutional Legislation (145)—The Modified Rigidity of the Constitution of the French Republic (148)—The Rigid Constitution of the German Republic (151)—Rigid Constitutions under the British Crown (153): (i) *The Dominion of Canada*; (ii) *The Union of South Africa*; (iii) *The Irish Free State*; (iv) *The Commonwealth of Australia*—The Swiss Constitution (157)—The Rigid Constitution of the United States of America (158).

CHAPTER VIII

	PAGE
THE LEGISLATURE : (1) SUFFRAGE AND CONSTITUENCIES	162

Introductory (162)—The Growth of Political Democracy (163)—Manhood Suffrage and Attendant Questions (166)—Adult Suffrage To-day (168)—The Single-Member Constituency (172)—The Multi-Member Constituency (175)—Proportional Representation in Theory and Practice (180)—Problems Connected with the Representative System (183).

CHAPTER IX

THE LEGISLATURE : (2) SECOND CHAMBERS	187
---	-----

General Remarks on Bi-Cameral Constitutionalism (187)—The House of Lords : Past and Present (189)—The Nominated Second Chamber in Italy and Canada (195)—The Partially Elected Upper House in Japan, Spain and South Africa (198)—The Elected Senate in a Fully-Federalised State : U.S.A. and Australia (201)—The Elected Senate in a Unitary State : France and the Irish Free State (205)—The Special Cases of Switzerland and Germany (207)—Conclusions (210).

CHAPTER X

THE PARLIAMENTARY EXECUTIVE	212
---------------------------------------	-----

The Executive, Apparent and Real (212)—The Theory of the Separation of Powers (214)—The History and Present Form of the Cabinet System in Britain (216)—Responsible Government in the British Self-Governing Dominions (222)—The Cabinet in the Third French Republic (226)—The New German Cabinet System (230)—The Cabinet System as adopted in some Post-War European States (232).

CHAPTER XI

THE NON-PARLIAMENTARY OR FIXED EXECUTIVE	237
--	-----

General Conception of the Democratic Value of a Fixed Executive (237)—Application of the Principle in the United States (239)—The Peculiar Executive of the Swiss Confederation (244)—Post-War Tendencies in Italy (247)—The Interesting Case of Post-War Turkey (252)—Comparative Advantages of Parliamentary and Fixed Executives (254).

CHAPTER XII

THE JUDICIARY	258
-------------------------	-----

The Independence of the Judicial Department of Government (258)—The Judiciary and the Legislature (261)—The Rule of Law (266)—Administrative Law (269)—Judiciaries under the Two Systems Compared (271).

PART III

ADDITIONAL CONSIDERATIONS

CHAPTER XIII

DIRECT DEMOCRATIC CHECKS	PAGE 281
The Plebiscite and the Problem of Minorities (281)—The Referendum (285)—The Popular Initiative and the Recall (289)—Arguments for and against the use of these Devices (292).	

CHAPTER XIV

PARTIAL SELF-GOVERNING INSTITUTIONS	297
General Remarks (297)—British India (301)—The British Crown Colonies (304).	

CHAPTER XV

THE ECONOMIC ORGANISATION OF THE STATE	308
Democracy, Political and Economic (308)—Economic Councils in the Irish Free State and the German Republic (311)—The Corporative State in Italy (316).	

CHAPTER XVI

THE CONSTITUTION OF THE LEAGUE OF NATIONS	326
Projects of Internationalism (326)—Fundamental Conceptions behind the League of Nations (329)—The Organs of the League (330): (i) <i>The Assembly</i> ; (ii) <i>The Council</i> ; (iii) <i>The Secretariat</i> ; (iv) <i>The Permanent Court of International Justice</i> —The Work of the League (334)—The Strength and Weakness of the League's Constitution (337).	

CHAPTER XVII

THE OUTLOOK FOR CONSTITUTIONALISM	342
General Summary, Survey, and Conclusion.	
NOTES FOR NEW EDITION	355
INDEX	375

BOOKS RECOMMENDED

(A Selection of Books published before 1930)

[NOTE.—The books mentioned at the end of each chapter are divided into two lists, headed "Reading" and "Books for Further Study" respectively. The first consists of books from which exact readings, appropriate to the subject-matter of the chapter, are given; the second of more general books. All the books mentioned in the original text are given in the following list, which is divided in the same way. It is, however, followed by a short list of "Source Books" in which the reader may find the actual texts, or summaries of the texts, of the Constitutions examined in this book. The reader is recommended to consult the list below in order to find the date and the publisher of the edition referred to.]

I.—READING

- BAGEHOT, W.: *The English Constitution* (with Introduction by the Earl of Balfour). (World's Classics, Oxford, 1928.)
- BOWMAN, I.: *The New World*. (Harrap, 1921.)
- BRYCE, J.: *The American Commonwealth*. 2 Vols. (Macmillan, 1910.) *Modern Democracies*. 2 Vols. (Macmillan, 1923.) *Studies in History and Jurisprudence*. 2 Vols. (Oxford, 1901.) (The Constitutional Essays have been published by the same publisher in one volume under the title, "Constitutions.")
- BURNS, C. D.: *Political Ideals*. (Oxford, 1921.)
- BUTLER, G.: *A Handbook to the League of Nations*. (Longmans, 1919.)
- DICEY, A. V.: *Law and Opinion in England*. (Macmillan, 1924.) *The Law of the Constitution*. (Macmillan, 1924.)
- DICKINSON, G. L.: *The Greek View of Life*. (Methuen, 1909.)
- DUNNING, W. A.: *A History of Political Theories*. 4 Vols. Vol. I, *Ancient and Mediæval*; Vol. II, *From Luther to Montesquieu*; Vol. III, *From Rousseau to Spencer*; Vol. IV, *Recent Times*. (Macmillan, 1923.)
- GETTELL, R. G.: *Readings in Political Science*. (Ginn, 1911.)
- JENES, E.: *The Government of the British Empire*. (Murray, 1918.) *The State and the Nation*. (Dent, 1919.)
- KEITH, A. B.: *The Constitution, Administration and Laws of the Empire*. One of 12 Volumes on *The Empire*, edited by Hugh Gunn. (Collins, 1924.) *Responsible Government in the Dominions*. 2 Vols. (Oxford, 1928.)
- LASKI, H. J.: *A Grammar of Politics*. (Allen and Unwin, 1925.)
- LEACOCK, S.: *Elements of Political Science*. (Constable, 1924.)
- LOWELL, A. L.: *The Government of England*. 2 Vols. (Macmillan, 1920.) *Governments and Parties in Continental Europe*. 2 Vols. (Longmans, 1896.) *Greater European Governments*. (Cambridge, Harvard University Press, 1925.)

- MACIVER, R. M.: *The Modern State*. (Oxford, 1926.)
- MAITLAND, F. W.: *The Constitutional History of England*. (Cambridge, 1909.)
- MARRIOTT, J. A. R.: *English Political Institutions*. (Oxford, 1925.) *The Mechanism of the Modern State*. 2 Vols. (Oxford, 1927.)
- MILL, J. S.: *Principles of Political Economy*. (Routledge.)
- MURRAY, R. H.: *The History of Political Science from Plato to To-day*. (Heffer, 1926.)
- NEWTON, A. P.: *Federal and Unified Constitutions*. (University of London Press, 1923.)
- POLLOCK, F.: *The League of Nations*. (Stevens, 1922.)
- REED, T. H.: *Form and Functions of American Government*. (Government Handbooks. Harrap, 1919.)
- SAIT, E. H.: *Government and Politics of France*. (Government Handbooks. Harrap, 1920.)
- SIDGWICK, H.: *The Elements of Politics*. (Macmillan, 1919.)
- TEMPERLEY, H. W. V.: *The Second Year of the League*. (Hutchinson, 1922.)
- WILLIAMSON, J. A.: *A Short History of British Expansion*. (Macmillan, 1922.)
- WILSON, WOODROW: *The State*. (Harrap, 1919.)
- THE ANNUAL REGISTER FOR 1927. (Longmans, 1928.)
- THE CONTEMPORARY REVIEW FOR 1928. January, February, March, April.
- THE ENCYCLOPÆDIA BRITANNICA. Eleventh Edition and its Additional Volumes, and Thirteenth Edition, New Volumes.
- EUROPA YEAR BOOK FOR 1928. (Routledge.)

II.—BOOKS FOR FURTHER STUDY

- BAKER, P. J. N.: *The League of Nations at Work*. (Nisbet, 1927.)
- BOUTMY, E.: *Studies in Constitutional Law: France, England, United States*. Translated by E. M. DICEY. (Macmillan, 1891.)
- BROOKES, E. H.: *What is wrong with the League of Nations? A Constructive Criticism*. (Hogarth Press, 1928.)
- BROOKS, R. C.: *Government and Politics of Switzerland*. (Government Handbooks. Harrap, 1920.)
- BROWN, I.: *The Meaning of Democracy*. (Cobden-Sanderson, 1926.)
- BRYCE, J.: *The Holy Roman Empire*. (Macmillan, 1918.)
- BUSSELL, F. W.: *Essays on the Constitutional History of the Roman Empire, A.D. 81-1081*. (Longmans, 1910.)
- COLE, G. D. H.: *Guild-Socialism Restated*. (Parsons, 1920.) *Social Theory*. (Methuen, 1921.)
- DICKINSON, G. L.: *The Choice before Us*. (Allen and Unwin, 1917.) *The European Anarchy*. (Allen and Unwin, 1916.) *A Modern Symposium*. (Dent, 1911.)
- FINER, H.: *The Case against P.R.* (Fabian Society, 1924.) *Representative Government and a Parliament of Industry. A Study of the German Federal Council*. (Fabian Society, 1923.)
- FOWLER, W. W.: *The City State of the Greeks and the Romans*. (Macmillan, 1913.)

- FREEMAN, E. A.: *Comparative Politics*. (Macmillan, 1896.)
- FUSTEL DE COULANGES: *The Ancient City*. (Translated by W. Small.) (Lothrop, Lee, and Shepherd, 1901.)
- GOODNOW, F. J.: *Comparative Administrative Law*. 2 Vols. (Putnam, 1893.)
- GREEN, T. H.: *The Principles of Political Obligation*. (Longmans, 1895.)
- HALL, H. D.: *The British Commonwealth of Nations*. (Methuen, 1920.)
- HAYES, C. T. H.: *Essays on Nationalism*. (Macmillan, 1926.)
- HETHERINGTON, H. J. W. AND MUIRHEAD, J. H.: *Social Purpose*. (Allen and Unwin, 1918.)
- HEWART, LORD (Lord Chief Justice): *The New Despotism*. (Benn, 1929.)
- HUMPHREYS, J. H.: *Proportional Representation—A Study in Methods of Election*. (Methuen, 1911.) *Practical Aspects of Electoral Reform—A Study of the General Election of 1922*. (King, 1923.)
- ILBERT, C.: *Parliament. Its History, Constitution, and Practice*. (Home University Library, Williams and Norgate, 1911.)
- JENKS, E.: *Law and Politics in the Middle Ages*. (Murray, 1898.)
- JONES, T. H.: *Social Economics*. (Methuen, 1921.)
- KEITH, A. B.: *Dominion Home Rule in Practice*. (Oxford, 1921.) *The Sovereignty of the British Dominions*. (Macmillan, 1929.)
- KRÜGER, F. K.: *Government and Politics of the German Empire*. (Government Handbooks. Harrap, 1920.)
- LASKI, H. J.: *The Foundations of Sovereignty*. (Allen and Unwin, 1921.)
- LEES-SMITH, H. B.: *Second Chambers in Theory and Practice*. (Allen and Unwin, 1923.)
- LOW, S.: *The Governance of England*. (Fisher Unwin, 1914.)
- LOWELL, A. L.: *Essays on Government*. (Houghton, Mifflin, 1889.)
- MACIVER, R. M.: *Community*. (Macmillan, 1924.) *The Elements of Social Science*. (Methuen, 1921.)
- MAITLAND, F. W.: *Political Theories of the Middle Ages*. (Translated from the German of Otto Gierke.) (Cambridge, 1913.)
- MARRIOTT, J. A. R.: *Second Chambers*. (Oxford, 1927.)
- MEDLEY, D. J.: *English Constitutional History*. (Oxford, 1913.)
- MILL, J. S.: *Representative Government*. (With *Liberty and Utilitarianism* in Everyman's Library. Dent, 1917.)
- MONTAGUE, F. C.: *The Limits of Individual Liberty*. (Rivingtons, 1885.)
- MUIR, R.: *The Expansion of Europe*. (Constable, 1926.) *National Self-Government*. (Constable, 1918.) *Nationalism and Internationalism*. (Constable, 1919.)
- MURRAY, G. and Others: *The League and its Guarantees, etc.* (Six Pamphlets bound up and published by British Periodicals, 1920.)
- MURRAY, R. H.: *The Political Consequences of the Reformation*. (Benn, 1926.)
- MUZZEY, D. S.: *An American History*. (Ginn, 1920.)
- NITTI, F. L.: *Bolshevism, Fascism and Democracy*. (Translated.) (Allen and Unwin, 1927.)
- OSTROGORSKI, M.: *Democracy and the Organisation of Political Parties*. (Translated by F. Clarke.) (Macmillan, 1902.)
- POLLARD, A. F.: *The Evolution of Parliament*. (Longmans, 1926.) *Factors in American History*. (Cambridge, 1925.) *Factors in Modern History*. (Constable, 1926.) *The League of Nations. An Historical Argument*. (Oxford, 1918.)

- PORRITT, E.: *Evolution of the Dominion of Canada*. (Government Handbooks. Harrap, 1920.)
- RIDGES, E. W.: *Constitutional Law of England*. (Stevens, 1922.)
- RITCHIE, A. G.: *Natural Rights*. (Allen and Unwin, 1895.) *The Principles of State Interference*. (Swan Sonnenschein, 1902.)
- ROSE, J. H.: *Nationality as a Factor in Modern History*. (Rivington, 1916.)
- RUSSELL, B.: *Principles of Social Reconstruction*, 1916. *Prospects of Industrial Civilisation*, 1922. *Roads to Freedom: Socialism, Anarchism, and Syndicalism*, 1918. (All three published by Allen and Unwin.)
- SALVEMINI, G.: *The Fascist Dictatorship*. (Cape, 1929.)
- SEELEY, J. R.: *Introduction to Political Science*. (Macmillan, 1914.)
- SMITH, A. L.: *Church and State in the Middle Ages*. (Oxford, 1913.)
- STEINER, R.: *The Threefold State*. (Allen and Unwin, 1920.)
- STILLMAN, W. J.: *The Union of Italy*. (Cambridge, 1894.)
- TEMPERLEY, H. W. V.: *Senates and Upper Chambers*. (Chapman and Hall, 1910.)
- TOYNBEE, A.: *Nationality and the War*. (Dent, 1918.)
- VILLARI, L.: *Italy*. (Benn, 1929.)
- WARD, P. W.: *Sovereignty*. (Routledge, 1928.)
- WILLIAMS, J. F.: *The Reform of Political Representation*. (Murray, 1918.)
- ZIMMERN, A. E.: *The Greek Commonwealth*. (Oxford, 1924.) *Nationality and Government*. (Chatto and Windus, 1918.)
- "REPRESENTATION." The Journal of the Proportional Representation Society. (Published monthly by the Society, 82, Victoria Street, S.W.1.)

III.—SOURCE BOOKS

- DODD, W. F.: *Modern Constitutions*. 2 Vols. (Fisher Unwin, 1909.) (Complete texts of all important pre-War Constitutions.)
- MACBAIN, H. L. and ROGERS, L.: *The New Constitutions of Europe*. (Doubleday, Page, 1922.) (Complete texts of all the post-War Constitutions of Europe.)
- NEWTON, A. P.: *Federal and Unified Constitutions*. (University of London Press, 1923.) (Already referred to in List I above. Contains texts of several important Constitutions, old and new.)
- SELECT CONSTITUTIONS OF THE WORLD. (Prepared for Dail Eireann by order of the Irish Provisional Government, 1922, and published by H.M. Stationery Office, 1924.) (Complete texts of several important Constitutions, old and new.)
- EUROPA YEAR BOOK FOR 1926. (In this issue H. FINER gives a summary of the Constitution of every important existing state.)

INTRODUCTION TO NEW EDITION

IN this Introduction it will not be possible to follow precisely the comparative method, on the basis of the classification referred to in the Preface to this Edition, and as originally adopted in the text, for, as we said,* "the disadvantage of this classification is that it involves the necessity of dealing with each state several times, each time in respect of one attribute." In a short statement such a plan would clearly be too detached and broken to be effective. But it is necessary to make some inquiry into the constitutional modifications that have taken place, since 1930, in Britain and the British Commonwealth, particularly in Ireland and India; in the United States, especially in reference to the powers of the Federal Government; in Germany, Italy, Portugal, Spain, and Russia; and into the history of the experiment in collective security associated with the League of Nations. In the pages that follow we shall deal with each of these topics in the order given.

I. CONSTITUTIONAL CHANGES IN PRACTICE AND LAW IN THE BRITISH COMMONWEALTH OF NATIONS

(a) *Party, Prime Minister, and Cabinet in Britain*

Dr. Ivor Jennings in his book *Cabinet Government* states that "the distinction between laws and conventions is not really of fundamental importance. A constitution necessarily rests on acquiescence, whether it is established by referendum or by tacit approval or by force. If an organised public opinion regards it as noxious it will be overthrown. If a Louis Napoleon or a Mussolini or a Hitler considers that he can induce or compel acquiescence in a change, he will not hesitate to overthrow it merely because it is enacted as law."

Acquiescence used in this broad sense may be construed as a democratic justification of almost any political action, though

See below, p. 59.

it remains an open question whether the kind of forceful imposition that the German and Italian people have suffered in recent years can be so described. But it is certainly true that a Dictator would not hesitate to overturn a constitution "merely because it is enacted as law." Indeed, it is of the essence of a dictatorship, as distinct from a democracy, that it shall not be confined within constitutional rules. Nevertheless, both Mussolini in Italy and Hitler in Germany have protested their intention of not outraging the constitution, and in neither case has the Leader positively announced the overthrow of the original constitution and the establishment in its place of a new one. It is interesting to note, therefore, a curious likeness between those political organisations which can in the strictest sense be called constitutional and those which we may call autocratic or authoritarian : namely, that conventional development characterises them both, the distinction being in the method and tempo of the changes. In a constitutional state these changes are constantly taking place. Sometimes they become so set as not to require the sanction of written law. In other cases, they are later put in statute form whether because of some threat to their sanctity or because the situation requires some new definition of the conditions under which they work or because there is a positive desire to put them in a declaratory form.

An example of recent conventional development in Britain is found in a variation of the Party System, which began with the establishment of the National Government in 1931. Up to that time, with the exception of the critical War and immediately post-War period, for many years there had been solid Party Government, in the sense that, though a Party might have been in a minority—as, for example, the Liberal Party had been from the election of 1910 onwards—members of the Cabinet had been exclusively drawn from one Party, and a supporting majority was maintained by the adhesion to the Party with the greatest strength of a group which tipped the balance in its favour against the Party with the next largest numbers. The unusual feature of National Government in 1939 was that the circumstances were different from those in

which it was instituted in 1931, just as the National Government of 1931 was different from the Coalition Governments formed by Mr. Asquith (later Lord Oxford) and Mr. Lloyd George during the War or from the Coalition Government of Mr. Lloyd George following the so-called "Coupon Election" of 1918. Mr. MacDonald's National Government was formed as a result of the financial crisis in August, 1931, and he was then in a hopeless minority. After the General Election of October of that year, of the 614 Members of the House of Commons, no fewer than 558 supported Mr. MacDonald's Government; yet of these, 471 were Conservatives and only 13 belonged to Mr. MacDonald's newly formed National Labour group. When Mr. MacDonald and Mr. (later Earl) Baldwin changed places in June, 1935, the situation remained, and with the General Election of November of that year, in spite of a clear party majority over all other parties and groups in the House, Mr. Baldwin continued the National Government, and it was retained by Mr. Neville Chamberlain when, in May, 1937, he succeeded Mr. Baldwin as Prime Minister.

It might be argued that the situation has remained critical (and certainly the more recent years have not been free from crises) and that consequently there was as much justification in 1939 as there had been in 1931 for a Government in whose support several parties co-operated. But the interesting point here is that, whereas the first National Government had at its head a Prime Minister practically without a Party, the National Government in 1939 had a Prime Minister with a Party majority over the sum of all other parties and groups. Thus, in spite of obvious opportunities to revert to the type of Party Government which had for so long been a feature of modern constitutional practice in Britain, the principle of National Government had, without disturbance to the Constitution and by a purely conventional growth, come to be recognised as an appropriate parliamentary method. It is interesting to compare this with the French method, described in Chapter 10, Section V, of the text.* There a coalition of groups is forced upon a statesman forming a Cabinet by the absence of large

* See pp. 226 ff.

solid parties and the impossibility therefore of gaining a majority without creating a union of groups. The main difference between the situations in the two states remains, namely, the stability of Cabinets in Britain, in spite of the latter-day change in their erstwhile party homogeneity, and the unsteady tenure of any Cabinet in France, which makes Cabinet crises so frequent in that country.

An example of the legalisation in documentary form of a previously long-standing convention is found in the Ministers of the Crown Act of July, 1937, which increased and stabilised ministerial salaries. In moving the second reading of the Bill, Sir John Simon pointed out that Parliament would hereby be placing for the first time on the Statute Book the terms "Cabinet" and "Cabinet Minister" and giving to the Prime Minister, as such, a legal status. The Act, in fact, fixed the Prime Minister's salary at £10,000 per annum, whereas hitherto he had had no salary at all as Prime Minister, the salary of £5,000 a year which he drew being by virtue of the sinecure of First Lord of the Treasury or some other office which he might hold. Thus it is no longer true to say, as we do in the text*: "And just as the Cabinet is unknown to law, so is the office of Prime Minister. Not one penny of public funds goes in salary to the Prime Minister, as such." For the age-old convention has passed into statute law and the Premiership has at length been legally recognised after two centuries of equally firm existence without such statutory acknowledgment.

(b) *The Status of Self-Governing Dominions*

Perhaps the most marked development since 1930 of this legalisation in writing of hitherto secure conventions is to be found in the Statute of Westminster of 1931. In discussing in the main text the constitution of the British Empire,† we pointed out that there is no such constitution. There is, we said, a Constitution of the United Kingdom and a Constitution of each Self-Governing Dominion, and we added that "to bring them all together under one head is merely to assert

* See below, p. 220.

† See below, pp. 85-86.

the ultimate supremacy of the British Parliament over any part of the Empire." In practice, as we pointed out, this supremacy had long ceased to have any existence, and at the Imperial Conference of 1926 the rights of the Dominions were clearly stated in the following words : [" They (the Dominions) are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the crown, and freely associated as members of the British Commonwealth of Nations."] Further, as a result of the Imperial Conference of 1926,* the Governor-General had ceased to represent the British Government (conceived as the Cabinet) in a Dominion and it had become necessary to appoint a High Commissioner as, in effect, a liaison officer. This development of complete independence on the part of the Self-Governing Dominions has been given statutory force by the Statute of Westminster of 1931.

The Statute is described as an " Act of the Imperial Parliament to give effect to certain Resolutions passed by Imperial Conferences held in the years 1926 and 1930." The Dominions concerned are named in the preamble to this Statute. They are the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State,† and Newfoundland.‡ The preamble states, *inter alia*, that " the Crown is the symbol of the free association of the members of the British Commonwealth of Nations," that " they are united by a common allegiance to the Crown," and that " it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request of and with the consent of that Dominion."

The second, third and fourth clauses of the Statute are so vital and explicit as to be worth quoting verbatim :

" 2. (1) The Colonial Laws Validity Act (1865) shall not apply

* See p. 225 of text.

† As it then was, but see below, pp. xxiv ff.

‡ See Note 5 at end, p. 357.

to any law made after the commencement of this Act by the Parliament of a Dominion.

"(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under such Act, and the Powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule, or regulation, in so far as the same is part of the law of the Dominion.

"3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

"4. No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof."

The penultimate clause (11) draws a clear distinction between a Dominion and a Colony in the statement that "the expression 'colony' shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of that Dominion." *

It will be clear from all this that the Crown remains as the sole unifying force and that the Governor-General of a Dominion directly represents the King, and is, vis-à-vis a Dominion Parliament, exactly in the position of the King vis-à-vis the Parliament of the United Kingdom: hence the official expressions "His Majesty's Government in the United Kingdom," "His Majesty's Government in the Dominion of Canada," and so on.

(c) *The New Constitution of Ireland (Eire)*

This question of the Governor-Generalship becomes vital in studying what has, since the passing of the Statute of West-

* The text of the Statute is in *Constitutions of All Countries*: Vol. I, *The British Empire*, pp. 1 ff. See also Keith: *The Governments of the British Empire*, pp. 34 ff., and *The Dominions as Sovereign States*, pp. 100 ff., pp. 323 ff., and pp. 334 ff.

minster, happened in Ireland, where a new Constitution for what used to be called the Irish Free State and is now called Eire, came into force on December 29, 1937, after its acceptance by the people in a plebiscite held in the previous July. The Constitution discussed in the text is that instituted in 1922, founded on a treaty signed in 1921 between Great Britain and Southern Ireland after a devastating civil war, and ratified by the Imperial Parliament and an Irish Constituent Assembly. A clause of this Constitution * specifically stated that the Executive Authority was vested in the King and should be exercised by the Representative of the Crown, as in the case of the Dominion of Canada, that is to say, by the Governor-General. The new Constitution abolished the office of Governor-General and establishes in its place that of the President of Ireland (Eire). Moreover, the Constitution makes no mention of the King and contains no Oath of Allegiance. Nevertheless, in the previous December, an Act had been passed by the Parliament of the Irish Free State, which then still existed, in common with other Dominions, recognising the successor of Edward VIII on his abdication "for the purposes of the appointment of diplomatic and consular representatives and the conclusion of international agreements so long as the King continued to be recognised by the associated Dominions as the symbol of their co-operation." It is therefore presumed that in the new Constitution the King is implicitly recognised as King of Ireland, and that is certainly the reason why Irish Republicans are not satisfied with the new Constitution. This will presumably continue to be the case so long as Eire continues its association with the British Commonwealth of Nations.

Yet the fact remains that the language of the new Constitution is such as to apply to a Republican state, and, as Mr. de Valera said in the debates on it, "not a comma" of it would need to be altered if the Republic of Ireland were to be declared. The new Constitution is so worded as to apply ultimately to the whole of Ireland, for the "national territory," says the Constitution, "consists of the whole island of Ireland, its islands and the territorial seas," but "pending the reintegration

* Quoted below, p. 225.

of the national territory " the laws enacted by the Parliament under the Constitution shall apply to the territory of the former Irish Free State.

The new Constitution, then, is that of a unitary state. The President is elected by direct vote of the people and holds office for seven years. His executive power is normally operated through a Cabinet with a Prime Minister (*Taöiseach*) responsible to a Parliament of two Houses (*Dail Eireann* and Senate), the lower elected by adult universal suffrage, the upper partly nominated and partly elected from panels prepared under special provisions.* But besides this the President has certain powers exercised with the aid of a Council of State, a consultative and advisory body, made up of seven *ex officio* members (including the Prime Minister) and others nominated by the President. There is a Supreme Court of Judges to which the President may refer any bill before he signs it for a decision whether any of its provisions are repugnant to the Constitution, and he is not obliged to consent to the Bill until the decision of the Supreme Court is announced. There are also provisions giving the President the right to address a message to the nation at any time and allowing for the use of the referendum in the case of bills which may, under certain conditions, be referred to the people for their decision.†

If any proof were needed of the fact that the Self-Governing Dominions are in very truth recognised by Britain as independent states it is surely found in the acceptance by the British Government of this new Constitution of Eire, though they refused to recognise any of its provisions as applying to Northern Ireland, which for them remained " an integral part of the United Kingdom."

(d) *Prospects of Unitarianism in the Commonwealth of Australia*

Australia is another Self-Governing Dominion in which

* For details on constitution of Senate, see Note 28, p. 365.

† The text of the new Constitution is given in *Constitutions of All Countries*, Vol. 1, *The British Empire*, pp. 189 ff., and in Public Documents in *Annual Register for 1937*. See also Keith: *The Dominions as Sovereign States*, *passim*, but especially pp. 235-238 and pp. 314-316.

during the last few years important constitutional developments have been taking place, for there have been decisive movements which may lead to the granting of further powers to the Federal Authority. The Commonwealth, as is explained in the text,* is composed of six States (including Tasmania), and the Constitution sets forth the powers of the Federal Authority, now quartered at Canberra, and leaves the "reserve of powers" to the States. There is also a powerful Federal Judiciary which, as a Supreme Court, not only, as in the United States, interprets the Constitution but, unlike that of the United States, can entertain appeals from the States on pure state law.

For some years this high federalism has been felt to work to the disadvantage of Australian interests. As explained in the text,† attempts made in 1926 to amend the Constitution in the direction of giving greater powers to the Federal Authority in the matter of the regulation of industry and commerce and carrying on the public services if threatened or interrupted, failed by the action of the States in declining to approve them. But the intervening years have only made more evident the need for decisive action in this matter.‡ In the House of Representatives on November 22, 1938, the Government announced its intention of holding a Special Session early in 1939 to formulate amendments to the Constitution. Both sides of the House cheered this announcement. The Leader of the Opposition had already said that Australia was ruled not by a majority of electors but by a majority of judges in the High Court "invalidating legislation not on its merits but on the ground that it was *ultra vires* the written constitution." Every national emergency, he said, found Australia's hands tied by "constitutional manacles resulting in inaction and serious delay and bringing into ridicule the parliamentary system." No sovereign unity could, he added, be procured with seven sovereign parliaments, each of practically equal status, embracing 13 houses, with more than 600 members,

* See below, pp. 110-113 and 155-157.

† See below, p. 156.

‡ For an interesting commentary on the whole problem, see Keith : *The Dominions as Sovereign States*, pp. 498-524.

and 70 ministers, with separate overseas representatives and separate services.*

The result of the Special Session of Parliament, at which the Government promised that the matter should be discussed, may well be that these points will be submitted to the people in a referendum, in view of the unreadiness of the States' legislatures to sacrifice voluntarily any of their existing rights.

(e) *The Government of India Act, 1935*

The promulgation of the new Constitution for what was formerly the Irish Free State is an extreme case of the exercise by a Self-Governing Dominion of political independence. At the other end of the scale of responsible government in the British Commonwealth we have the new Constitution of India. In the text † we showed the position as it was in 1930 under the Government of India Act of 1919. We indicated that that Act set up for India as a whole a Council of State (60 members) and a Legislative Assembly (140 members), partly nominated and partly elected, to assist the Viceroy in his government of British India. The powers of these central bodies were very shadowy, but to the eight principal Provinces of British India a real measure of self-government was granted. Each Province was to have an Executive Council and a Legislative Council and its affairs were divided into reserved and transferred subjects. The transferred subjects were dealt with by the Governor on the advice of Ministers who were members of the Legislative Council, to which they were responsible for their acts in this connection.

We explained that this Act was to operate for ten years, and that in 1928 the Simon Commission visited India with a view to an inquiry into the practicability of its revision. Out of the experience of the working of the Act of 1919, and of the Simon Report and the discussions which followed it, has arisen a new adventure in the self-government of a vast native population, which constitutes perhaps the most daring political

* For some examples of these weaknesses, see Note 8, p. 359.

† See below, pp. 301-304.

experiment in the history of the world. After seven years of discussion in India and in Britain, a new Government of India Act was passed in 1935. It is a monumental document filling nearly 100 pages of close print in Volume 1 of *Constitutions of All Countries* published by H.M. Stationery Office. In one respect the Act introduces an entirely novel experiment, namely, the principle of a Federation of India. In another, with reference to the Provinces, it constitutes a development and enlargement of political rights and powers already granted and exercised under the Act of 1919. The Act, so far as it concerns Provincial autonomy, came into operation April 1, 1937. The Provinces granted autonomy are called Governors' Provinces (of which there are at present eleven), and these are divided into two classes, one class comprising Madras, Bombay, Bengal, the United Provinces, Bihar, and Assam, and the other class the remaining five Provinces. The six named have two legislative chambers, the Legislative Council and the Legislative Assembly, and the remainder only one, the Legislative Assembly. In each of these the Governor represents the King and is aided and advised by a Council of Ministers responsible to the Legislature. The Governor is to choose his Ministers according to his view of their likelihood of being supported in the Legislature. He will take the Ministers' advice on all Provincial matters except those for which he is directly responsible, such as the safety of the Province, or orders from the Governor-General which might conflict with the views of his Ministers.

The Act lays down how the Provincial Assemblies are to be constituted and the franchise of the electorate. The franchise is granted to men and women of 21 years or more with certain qualifications, based mainly on property, and the electorates in each Province are so arranged as to give representation to the various races, communities and special interests. The franchise has thus been granted to over 30 millions of the native population of India, including over four million women. The first general election under the Act was held in 1937, and although the vast majority of the electorate is illiterate, the election aroused great popular interest, and over 50 per cent.

went to the polls, a proportion that compares very favourably with that in elections held in this country.

It is evident that this scheme is much more far-reaching than that under the Act of 1919 and that it comes very near to what we know as Responsible Government as applied to the Dominions. It will be observed that, whereas under the Act of 1919, the powers were divided into reserved and transferred, and only the latter were within the purview of the responsible ministries, in the new Act the scope is much wider, including as it does all matters other than those concerning which the Governor must have, or decides should be, at his discretion. We therefore have here an incipient form of Cabinet Government, such as that which existed in Canada after 1840 as a result of the Durham Report,* in which the full stature of responsible government may gradually be reached by the attitude and conduct of sympathetic Governors, and given the readiness of parties in the legislature to learn and co-operate.

The idea of an Indian Federation is something quite new. The membership of the All-India Federation under the Act is to consist of Governors' Provinces, Commissioners' Provinces (parts of British India other than the eleven Provinces referred to above) and the Native States which agree to join it. The Federation will come into being on a date to be announced by Royal Proclamation and it appears to be the intention to launch the federal plan as soon as the rulers of states representing not less than half the aggregate population of the Native States, and entitled to not less than half the seats in the Federal Legislature, have agreed to come in.

Under the Act the Federal Government will consist of the Governor-General and a legislature of two Chambers, namely, the Council of State and the House of Assembly. The upper house is to consist of 156 representatives of British India, mostly elected by an electorate of about 100,000 persons and not more than 104 representatives of Native States nominated by the Rulers. "The House of Assembly is to consist of 250 representatives of British India, chosen by the Provincial

* See below, pp. 223-224.

Legislatures, and not more than 125 representatives of the Indian States, the allocation of the seats to each state or group of states to be in proportion to their population." The franchise for the election of the Lower House, so far as the representatives of British India are concerned, is to be substantially that for Provincial Legislatures, with an added educational qualification, thus constituting a total native electorate of several millions of men and women.

The executive power of the Federation will be exercised by the Governor-General, as the Representative of the King-Emperor, aided and advised by a Council of Ministers responsible to the Legislature. But certain departments—namely defence, external affairs and ecclesiastical administration—will remain in the personal control of the Governor-General. Also the Governor-General will continue to be charged with "special responsibility" in respect of certain matters, such as menace to internal peace, financial stability, interests of minorities, protection of rights of any Indian States, and prevention of commercial discrimination, but only where he feels it is contrary to the general good would he even in these cases decline to be advised by the Council of Ministers. For the rest, Cabinet Government, as normally understood, will operate in the Federal State of India under the Act of 1935.

The federal system thus projected has a background very different from that on which federations have generally been based.* British India is a unitary state and not made up of isolated units which desire union but not unity. The situation is, therefore, rather like that referred to in the Conclusion of this book, where the possibilities of devolution, as a prior act to federation, are discussed.† But even this is complicated by the fact that not only the Provinces of British India but the Native States are to be federated. The units it is proposed to federate are, therefore, very dissimilar. For it must not be forgotten that a Federation of India implies the union of a continent rather than of a mere country, somewhat like a Federation of European States, though even more complex in view of the differences of history, race, culture, colour, religion and

* See below, pp. 98-103.

† See p. 347.

so on, among the Indian Provinces and States. The Provinces have had their power delegated to them by the Imperial Authority and therefore have no original sovereign, or even autonomous, powers to surrender. As to the Native States, hitherto the Imperial Authority has had no internal control over them, and the Federal Authority will thus be able to control them only in respect of those matters which the Rulers are willing to permit. It would seem, therefore, that the range of powers of the Federal Government will be different in the case of the Provinces from those in the case of the States.*

Hence the Government of India Act of 1919, so far as it concerns the central power as distinct from the Provincial, will have to be repealed when the new Act, so far as it refers to the Federation, comes into force, but it must still be left to the Governor-General to deal with vital matters in relation to the States which must necessarily lie beyond the scope of the Federal Constitution. Meanwhile, and until such time as the Federation is proclaimed, the Act of 1919 is still operative for all affairs, other than Provincial, in India.

II. THE FEDERAL SYSTEM IN THE UNITED STATES OF AMERICA

Since 1930 there have been some interesting constitutional movements in the United States of America. We illustrated the rigidity of the American Constitution † by indicating that up to 1930, since the promulgation of the Constitution in 1789, there had been only 19 amendments, and that only four were carried between 1870 and 1920. Strange, then, that there were two amendments in one year, namely, the twentieth and twenty-first amendments in 1933, ‡ the twentieth concerning the inauguration of the President, and the twenty-first repealing Prohibition.

During Franklin Roosevelt's Presidency (since 1933) there

* The text of the Act of 1935 is given in *Constitutions of All Countries*, Vol. 1; *The British Empire*, pp. 243 ff. See also Keith: *The Governments of the British Empire*, pp. 544 ff., and *The Dominions as Sovereign States*, pp. 34, 55, and 725.

† See below, pp. 158-160.

‡ For further details, see Note 15, p. 361.

has been a growing controversy as to the respective spheres of Federal and State Government. Strong Presidents, like Abraham Lincoln, Theodore Roosevelt, and Woodrow Wilson, have always tended to attempt to strengthen the Federal Government at the expense of the States, and clearly in times of stress and crisis the lack of unitary control is a marked weakness of highly federalised states like the American Union. Franklin Roosevelt's term has been marked by such stress and crisis from both the social and the economic points of view. The growth of violent crime, racketeering and gangsterism in the United States, or rather the inability to check their growth, is regarded by many respectable critics as attributable to the existence of forty-eight different types of state criminal law and the ease with which the criminal may evade the grasp of the police authorities of one State by escaping into another. For this reason, and from motives of sheer self-defence, American society has readily allowed the development of Federal powers to cope with this menace by means of a centrally controlled police ("G" men), which had already existed under strict federal law for the enforcement of Prohibition.

But an even more urgent cause for the strengthening of Federal, as against State, powers, was, in the view of the President, the grave economic situation in the States arising from the depression. All his aims and hopes, coming under the general heading of the "New Deal" and the National Industrial Recovery Act (N.I.R.A.), had as their objective the utilisation of federal aids to the recovery of industry and the passage of "social security legislation" (unemployment and health insurance, unemployment benefit, and old age pensions). But in 1935 the Supreme Court held that much of this was unconstitutional, and the President's efforts to use federal powers for the recovery of separate States lay in ruins. He made another attempt in 1936 to use Federal governmental powers, this time to regulate agriculture on a nation-wide basis. But again the Supreme Court ruled that this was "an unwarrantable use of the taxing powers of the Federal Government" and that "the scheme violated the rights of individual States." When, in the next year, the Supreme

Court finally declared the N.I.R.A. unconstitutional, the President in a Message to Congress in February, 1937, boldly and categorically demanded a reorganisation of the entire Federal Judiciary. In a very significant, and possibly historic conclusion, which sums up in a phrase the very essence of constitutionalism, the President said: "It matters not that Congress has enacted the law, that the Executive has signed it and that the Administrative machine is waiting to function; . . . the Judiciary . . . is assuming an additional function and is coming more and more to constitute a scattered, loosely organised and slowly operating Third House of the National Legislature."

The President proposed that, whenever a Federal Judge, having reached the age of 70, failed to retire within six months, the President might appoint an additional Judge. But it was not to be. He was charged with attempting to "pack the Supreme Court," and the scheme was stigmatised as "Fascism" and "Dictatorship." It was finally defeated in the Senate, and a palliative measure was passed permitting the voluntary retirement of aged judges of the Supreme Court on full pay. With several changes, through deaths and retirements, the Supreme Court has shown more readiness to pronounce the measures of the Federal Government to be constitutional, and there is no doubt that the President's determination to act as far as possible for the American nation as a whole in all those matters which he conceives to be common to all States and to be remedied only thereby, is beginning to have its effect.*

The American Constitution remains, therefore, that of the most highly federalised state in the world, but the experience of the last few years may be laying foundations on which a much broader edifice of political unitarianism may be destined to be built up.

III. THE ESTABLISHMENT OF THE THIRD REICH

When this book was published, Germany was governed under the Constitution of 1919, otherwise known as the

* For an account of the events outlined here, see the *Annual Register* for the years concerned.

Weimar Constitution.* That Constitution had introduced fundamental changes in the government of the former German Empire, or Reich. The Empire established in 1871 was a federation of states formerly independent, though combined loosely in the German Confederation. The organs of this Federal Empire were the Imperium, the Chancellorship and a Parliament of two Houses, the lower called the Reichstag and the upper the Bundesrat. The King of Prussia under this Constitution was also German Emperor, and as such was head of a political organisation with little more than the appearances of a democratic control. The Chancellor was the chief Imperial Minister, but was not really responsible to the Reichstag, which, in any case, was elected on the basis of anything but a democratic franchise, while the Bundesrat was, in effect, a body of Ambassadors from the various states which were unequally represented in that Assembly.

The Constitution of 1919 abolished the monarchy and established in its place a Republic in which the federal principle was maintained, though in such a way as to modify the preponderating power of Prussia. At the head of this Republic was a President elected every seven years by the votes of the people of both sexes of 21 years or more. The elective thus replaced the hereditary principle, and the constitutional position of the President was comparable to that of the King in Britain or the President in France. While the office of Imperial Chancellor was retained, its character was radically changed by the introduction of Cabinet responsibility to Parliament. The Chancellor thus took on the character of a Prime Minister in the British sense. With a Reichstag now elected on a universal adult franchise and an upper house, now called the Reichsrat, in which the states were more evenly represented than under the old Empire, a true Parliamentary Executive seemed to be thus fully established.

Such was the Second Reich, which has now been replaced by the Third Reich of the Nazi régime, and just as the Second Reich overthrew the Monarchy, so the Third Reich has overthrown the Presidency. It was at the Reichstag elections in

* See below, pp. 117-120, 151-152, 230-232.

1930 that the Party founded by Hitler, the National Socialists (*Nationalsozialistische Deutsche Arbeiterpartei* or Nazis), gained its first parliamentary successes, and on January 30, 1933, a new Cabinet was formed with Hitler as Chancellor. In the following year President Hindenburg died and the Presidency was fused with the Chancellorship, and from that moment Hitler has held the double title of Chancellor and *Führer* (Leader). It is difficult, in studying the political history of Germany since the advent to power of the Nazi Party, to isolate the political from the social and economic factors, and still more difficult precisely to identify the constitutional position. For the present régime is the rule of a Party whose aim is to make the limits of its authority coterminous with the nation and the state. The government is concerned with every aspect of the lives of the people—social, economic, political, religious, and cultural—and everything is sacrificed to the state, conceived as an organic unity; in short, what the German philosophers call a *Weltanschauung*;* and hence the term totalitarian state, which Mussolini defines as “the state which absorbs in itself, to transform and make them effective, all the energy, all the interests, and all the hopes of a people.”†

Granted this totalitarianism as the basis of the state, it follows that constitutional principles and precedents play no part in political organisation where they might conflict with the realism of the Government's need. It is true that Hitler in his first months of power declared his intention of living within the letter of the Constitution,‡ but he has only used the organs of the Constitution where they would be to his positive advantage or might be regarded as having some useful qualities as propaganda. When Hitler became Chancellor on January 30, 1933, he announced a Four-Year Plan whose three aims were national unity, prosperity, and equality with other states. In his pursuit of these aims he could not allow any constitutional principles, much less democratic theories, to stand in his way. But he has at no time announced any

* See Translator's Introduction to Hitler's *Mein Kampf*, 1939, pp. 12-13.

† Quoted in Finer: *Mussolini's Italy*, p. 232.

‡ Roberts: *The House that Hitler Built*, p. 62.

specific intention of abrogating the Constitution, though in practice he has done so, as we shall show. As one of his own followers * said at the beginning of 1936, "Following his accession to power, the *Führer* consciously refused to give the Third Reich a written Constitution. He believed that the essential thing was not what constitution a country possesses, but rather under what conditions it lives, *i.e.* under what conditions of internal unity and order the nation lives. He, therefore, allowed the German unified, authoritarian and people's state to develop through organic and legal evolution, adapted to the general situation and to the needs of the moment. The Third Reich thus already has a new Constitution in the sense that there is a political organisation of the German people in the Third Reich. This does not find its expression, however, in a constitutional charter but in a series of fundamental laws, and above all in the fundamental concepts of National Socialism in the field of public law." †

Thus Hitler has maintained the Reichstag, but it has become completely emasculated. If, as we said in the text, ‡ the Reichstag in the First Reich had no real power, we may safely assert that the Reichstag of the Third Reich has no real existence either as a representative or as a deliberative or legislative body. It has sunk to even less than a registry of Government decisions, and appears to have become merely an occasional audience for the *Führer's* rhetorical utterances. In this connection it is perhaps an ironical fact that, since the Reichstag buildings were destroyed by fire in 1934, the Reichstag has generally met in the Kroll Opera House.

Hitler's first object was to destroy all other political parties than the National Socialist, and it is important to remember, as Professor Roberts says, that "the Nazi Party was only one political group among many, and the revolution consisted not of their accession to power but of their subsequent extermination of all opponents." § In his ruthless pursuit of this

* Herr Stuchart, Secretary of State.

† Quoted in Lichtenberger: *The Third Reich*, pp. 63-64, from the Special Number of the *Völkischer Beobachter* of Jan. 30, 1936.

‡ See below, p. 118.

§ *The House that Hitler Built*, p. 66.

aim, Hitler was able to squeeze through the Reichstag, on March 23, 1933, a law which gave him plenary powers to promulgate and enforce new laws even where they did not conform to the Constitution. Article 2 of this law said "National laws enacted by the National Cabinet may deviate from the Constitution so long as they do not affect the position of the Reichstag and the Reichsrat." On that day the Weimar Constitution was, in fact, abrogated,* for, despite the proviso respecting the powers of the Reichstag and Reichsrat, within the next few months both representative institutions were abolished and the federal character of the German state was destroyed.†

In his speech to the Nuremberg Congress in September, 1933, Hitler set forth his views in the following unmistakable terms: "A people who speak one language, who possess the same culture and whose destinies were worked out in the course of a common history, can do nothing else but strive toward a unified political leadership. The new German Reich ought not to be erected on the foundation of the states any more than on the basis of the German tribes, but rather on the entire nation and on the National Socialist Party, which comprises and unites within itself the entire German nation."‡

On January 30, 1934, within four months of the delivery of that speech, Hitler passed a "law for the Reorganisation of the Reich," § which in less than a hundred words abolished the popular assemblies of the German States (Article 1), transferred the sovereign rights of the States to the Reich and subordinated their governments to the Reich Government (Article 2), and asserted that the Reich Government may lay down new constitutional laws (Article 4). Thus were all representative institutions and local rights destroyed and a federal democracy was transformed in a few short months into a centralised autocracy.||

What is referred to in Hitler's laws as the National Cabinet

* Lichtenberger, *op. cit.*, pp. 62-63.

† Roberts, *op. cit.*, pp. 67 ff.

‡ Quoted in Lichtenberger, *op. cit.*, p. 73.

§ The full text is given in *ibid.*, Appendix III, p. 305.

|| Roberts, *op. cit.*, p. 70.

is not, of course, a Cabinet in the parliamentary sense. As M. Henri Lichtenberger points out,* the German Cabinet is no longer a "collegial assembly," in which the Chancellor is but *primus inter pares*, as it was under the Weimar Constitution, but "a council of leaders (*Führerrat*) which the *Führer* gathers round him in order to be informed of what is happening in the major departments of the state and to take their advice on the problems which arise. He alone, however, is master, and he reserves to himself the entire power of decision and full responsibility." But he is clearly not responsible to Parliament, as, for example, is the British Prime Minister, or to the people, in a periodical election, as is the President of the United States. His followers insist that he is not a Cæsar or an autocrat, because he has been freely chosen by the people. They say he came into power not by a *coup d'état* but by a legal vote, and that popular confidence in him has since been confirmed by later plebiscites. But it is evident that the Hitler régime established an executive outside all constitutional standards and that nothing short of a revolution, of a force equal to the one that carried him into power, is likely to remove him.

Two other institutions established by the Weimar Constitution have gone the same way as democratic government and state rights. We said in the text † that the Constitution of 1919 possessed the three essential characteristics of true federalism, namely, the supremacy of the Constitution, the distribution of powers between federal and state authorities, and a court to interpret it in case of conflict between the authorities sharing the power. But now the Constitution is no longer respected, the powers are no longer divided, and the Supreme Court is simply over-ridden on the grounds of state necessity. The other institution that has gone is the Advisory Economic Council, now replaced by a Reich Economic Chamber (1935).

Thus it is evident that Germany is now a unitary state of the most centralised kind, which it has never before been in the whole of its history, and since the forcible incorporation of Austria and Czecho-Slovakia this unitary state is larger than

* *The Third Reich*, p. 68.

† See below, pp. 119-120.

the old federal state. The constitutional rights of the people, as established in 1919, have been utterly destroyed. The Parliamentary Executive, as created by the Weimar Constitution, with an elective Presidency and a Prime Minister and Cabinet responsible to the Reichstag, has been replaced by an executive so rigid as to be beyond any democratic control, whether of a constitutionally elected assembly or of the people. It is true that the Referendum, which had such an important place among the constitutional and democratic safeguards of the Weimar Constitution,* has been freely used under the Nazi Régime, but for what utterly different purposes from those intended in that constitution !

Hitler has used this device of direct appeal to the people in the same way as Napoleon I and Napoleon III used it, that is to say, to get popular sanction for political action not only already decided upon but actually carried out. For this type of appeal we have in this book used the word plebiscite rather than referendum, which is really designed as an aid to democratic interest and control. Hitler has held a succession of plebiscites of this sort to secure popular consent *ex post facto* to his political actions. Thus the first was held on November 12, 1933, to ask the people to approve Germany's leaving the League of Nations and the Disarmament Conference. Another was held on August 19, 1934, when the people were asked to approve Hitler's action in making himself *Führer* and Chancellor on the death of President Hindenburg. In both cases enormous majorities of over 90 per cent. were recorded in favour, and it might be said, therefore, that the people have approved the régime. But it must be remembered that the first plebiscite was on a motion that no self-respecting German could reject, and the second was influenced by the great and daring deeds that Hitler had carried out to give back to the German nation its self-respect among the nations of the world. The only one that can be said to have had an element of free choice before the event was the Saar plebiscite of 1935. The most recent plebiscite was that held in 1938 to secure popular approval to the incorporation of Austria, which, of course, was

* See below p. 288.

readily forthcoming, the Austrian majority being 99·7 per cent. and the German 99·02 per cent.

Here, then, is one of the most remarkable, as it is one of the swiftest, political revolutions in the history of the world. The only democratic element in it is the fact that it has been carried through by the autocratic and demagogic genius of a man of obscure birth and upbringing. Perhaps its most extraordinary feature is that it appears to carry into effect stage by stage the prognostications of the *Führer* as given in his book, *Mein Kampf*, which is the Bible of the Nazi movement, as Marx's *Das Kapital* is, or was, the Bible of Russian Communism. *Mein Kampf* sets out a philosophy of political and social action whose ruthlessness and lack of social morality it is hard for a democrat to understand, and its author has established a political and social régime as remote from the principles of political constitutionalism set forth in this book as it is possible to conceive.

IV. PROGRESS OF THE CORPORATIVE STATE IN ITALY

Two lines of development in Italy were followed in the text of this book,* first political and secondly what may be called socio-economic. On the political side we showed that the earlier parliamentary democracy in Italy had, through the Fascist revolution, been replaced by a Dictatorship which turned a parliamentary into a fixed executive and the normal electoral system into one in which the whole country became one constituency with a list of candidates issued by the Fascist Government. On the socio-economic side there had already begun by 1930 the development of a national syndical system, whose ultimate purpose was the creation of what was called the Corporative State. The foundations of this system were laid in 1926 and 1927 when three decisions were reached, as outlined in the text,† namely, the Syndical or Trades Union Law of 1926, the Decree of July 1, 1926, and the Labour Charter of April, 1927. These laws established confederations of unions or syndicates with a general council and a Ministry

* See below, pp. 141 ff., 247 ff., 316 ff. † See below, pp. 319-333.

of Corporations. In 1929 a new electoral law gave the general councils the power to submit candidates for election to the Chamber of Deputies. These were to be sorted out by the Fascist Grand Council and the names thus chosen were submitted for yes or no to the people.

Thus the Chamber of Deputies remained, though it was caught up with an economic and social basis of representation which in effect destroyed the old democratic element. But for two or three years after the promulgation of the new scheme it remained little more than a paper constitution, and the Corporations played little part in the economic life of Italy. Then, in 1933, Signor Mussolini announced that, the syndical phase having been accomplished, the corporative phase might now be entered upon. The Corporations were to have the power to promulgate laws regulating the economy of the nation. In his speech on this occasion Mussolini declared that, as they had already buried "political liberalism," they were now about to bury "economic liberalism" also.*

The bill for the institution of the Corporations was passed by the Senate on January 13, 1934. In the course of the debate the *Duce* said that industrial economy required to be disciplined, and that this was equally true of agriculture, commerce, banking and manual labour. The state, he said, had the right to intervene "since it represents the consumer, the anonymous mass, which, not being organised in the capacity of consumer, must be protected by the authority which represents the total body of citizens. When we have sufficiently observed the practical working and effect of the Corporations, we shall reach the stage of constitutional reform. Only in this stage will the Chamber of Deputies be suppressed and replaced by a National Assembly of Corporations."†

The Councils of the twenty-two Corporations were solemnly installed by Mussolini on November 15, 1934. But Parliament continued. In March of the same year there had been a general election for the Chamber of Deputies which was announced thus: "A plebiscitary vote must affirm the primacy

* *Annual Register*, 1933, p. 166.

† Quoted in *Annual Register* for 1934, pp. 177-178.

of Fascist Italy and the love of the people for the *Duce*. Respond to the appeal of the *Duce* by going to deposit your 'Yes' of gratitude and consent." * The result of that election was that 99·84 per cent. of the votes cast were in favour of the Government. The election was a clear application of Mussolini's political creed, as stated in his essay in the *Enciclopedia Italiana*, published in 1932. In the second part of this Essay, entitled "Political and Social Doctrines," he states this creed, in what Dr. Finer calls the "coda of the Essay," in the following words: "Fascism denies that the majority, by the simple fact that it is a majority, can direct human society; it denies that numbers alone can govern by means of periodical consultation, and it affirms the immutable, beneficial and fruitful inequality of mankind, which can never be permanently levelled through the mere operation of a mechanical process such as universal suffrage." †

It was evident, then, in 1934, that Mussolini was moving towards a constitutional organisation which would give all the advantages of industrial unity and none of the disadvantages of political democracy, as normally understood. "The conception," says Professor Sabine, "of some sort of self-government for industry by the collective control of all engaged in it—workers, employers, and technical experts—had been exploited by syndicalists, with whom Mussolini was long identified, by guild socialists and by Catholic socialists. In the Fascist conception, however, the national control of industry rather than self-government in industry is the essence of the matter. Both in theory and in practice the state is above syndicates and corporations." ‡

This conception took shape finally in the establishment in 1939 of the Chamber of Fascios and Corporations. This appears to be the flower of the ideas first promulgated in 1926 and of the beginning of the true functioning of the Corporations in 1934. The new Chamber was opened on March 23, 1939, by the King of Italy. It had 682 members called National

* Quoted in Finer: *op. cit.*, p. 267.

† Quoted in *ibid.*, p. 209.

‡ Sabine: *A History of Political Theory*, p. 767.

Counsellors. Rather more than two-thirds of the members were delegates of the Corporations, generally leading officials of the syndicates. The remainder were officials of the Fascist Party. No sort of popular election was held for the selection of the members, most of whom were appointed *ex officio*, but they were all approved by the *Duce*. This new Chamber supersedes the Chamber of Deputies and bears the same relation to the Senate as did the former Chamber of Deputies.* The Senate, meanwhile, continues to be a body nominated by the Crown, in accordance with the original Constitution,† and, as Dr. Finer says, "the King has obligingly swamped the Senate with Fascists."‡

"The function of the new Chamber" wrote *The Times* Rome Correspondent, "is purely consultative. The old Chamber had in theory legislative powers. In practice the laws were made by the Government and submitted to it in the form of decrees, to which it gave its unqualified consent. Only the fiction of debate was kept up. Here and there a Deputy would venture an observation which contained a grain of mild criticism. An adverse vote or two would be recorded on quite unimportant measures. But essentially the passing of laws was a mechanical process. This pretence is now abolished. The Government officially assume the role of legislator while the Chamber and the Senate in turn are to offer criticism and advice."§ It is understood that most of the laws submitted to the new Chamber by the Government will be dealt with by Committees, and plenary sessions of the Chamber will be rare. The Committees may amend the Government's drafts, though, of course, the Government need not accept the amendments. When a law has passed the Committee it goes to the Senate, after which the *Duce* decides whether it is to go to the King for signature. But there are some measures which may be discussed only by the Chamber at plenary sessions. These are any concerned with the Constitution, the Budget, laws affecting

* The Author is indebted to the Secretary of the Italian Embassy in London for valuable help on this point.

† See below, pp. 195-196.

‡ Finer, *op. cit.*, p. 257, footnote.

§ See *The Times*, March 28, 1939.

the Judiciary, and reform of the penal codes, though even these may be dealt with by a Committee on a plea of urgency.

Here, then, is a very interesting experiment in political practice. The Chamber of Fascios and Corporations may be called a new sort of Parliament, convened on a functional or occupational rather than on a territorial basis, though not on a democratic franchise. How far it will exercise its nominal powers remains to be seen. And it must be remembered that it has a fair leaven of Fascist Party representatives, presumably to safeguard the rights of the régime. Moreover, it does not in the least diminish or modify the powers of the *Duce*, who is in no way responsible to the new Chamber. But the scheme has some constructive features, from which, conceivably, parliamentary democracy, in seeking the means of strengthening itself to face a changing world, has something to learn.

V. PORTUGAL, SPAIN AND THE U.S.S.R.

(a) *The Corporative Idea in the Portuguese Constitution of* 1933

An interesting development of the Corporative idea has taken place, since 1932, in Portugal. The Republican Constitution of 1911 had been suspended since the *coup d'état* of 1926, from which time the country had been governed under a form of Dictatorship. In 1932 a new Constitution was projected and the country accepted it in a plebiscite in 1933. This Constitution re-established an elective Presidency (seven-year period) and a legislature, but with only one Chamber, called the National Assembly, instead of two as under the Constitution of 1911.* This Chamber consists of 90 members who are elected on a restricted franchise from lists put forward exclusively by the Government Party. The system of voting under the new Constitution is quite novel, the unit being not the individual but the head of the family, whether man or woman.†

* See below, p. 190.

† See *Annual Register* for 1932, p. 205.

But there is besides a "Corporative Chamber" consisting of representatives of Local Authorities and industrial and commercial corporations, *i.e.* organisations of employers and employees. This body is not strictly a Second Chamber because it has no legislating power. But under the Constitution all bills must be submitted to it for its opinion before the Chamber can give a final vote on them.

(b) *Constitutionalism in Spain : Regained and Lost*

Something should be said about Spain, since much has happened there constitutionally since this book was written. At that time the Constitution of 1876 was suspended but the Dictatorship of the Marques de Estella had just * come to an end, and we indicated that there was then some prospect of a reversion to constitutional government.† In April, 1931, Municipal Elections, preparatory to a general legislative election, were held for the first time for seven years, and the pent-up political feelings of the people showed themselves in an overwhelming Republican majority in the towns. The Republican flag was thereupon hoisted in Madrid. A Republican Provisional Government was formed, and King Alphonso XIII left the country. In June the elections for the Cortes were held and produced a large Republican majority. This Cortes was a constituent assembly ; that is to say, its business was to formulate a new Constitution, and it produced it by the end of the year. In view of what has happened since in Spain, the Constitution of 1932 may perhaps be thought now to have little more than an historical or academic interest, for the Republicans, who were the makers and protagonists of that Constitution, were, in the Spring of 1939, finally crushed by the Nationalists, led by General Franco, who opposed it. Nevertheless, General Franco may well have to take account of this Constitution in working out the political future of Spain, and it may therefore be useful to outline its provisions.

By the Constitution, Spain was declared to be a "Democratic Republic of all classes" (Article 1) and to have "no

* January, 1930.

† See below, p. 11, footnote.

official religion " (Article 3). The new Constitution introduced federal elements into what had formerly been a unitary state, for the " Republic constitutes an integral state, compatible with the autonomy of the Municipalities and the Regions " (Article 1). The Constitution divided the powers between the Republican and Regional Governments and left the " reserve of powers " with the regions, each region having an assembly elected by popular, equal, direct, and secret suffrage.

The State Government consisted of a President elected by the Cortes and a number of elector-delegates equal to the number of Deputies, holding office for six years, and acting through a Council of Ministers with a President (Prime Minister) " answerable before Congress " (Article 90). Parliament or Cortes consisted of one Chamber, called the Congress of Deputies, composed of representatives elected by the universal, equal, direct and secret suffrage of all men and women of 23 years or more. Any sort of administrative law was abolished, and finally there was a Court of Constitutional Guarantees with power to decide on the constitutionality of laws. The Constitution might be amended on the proposal of the Government or of one-fourth of the Members of Parliament. The Cortes would then vote on the proposal, and if it gained an absolute majority of all members, the Cortes would be dissolved and new elections take place. The Chamber thus elected would be a constituent assembly and, having decided whether the amendment was to be adopted or rejected, would then continue to function as ordinary Cortes.*

Under the Spanish Constitution of 1932, then, there was a quasi-federal state, with a rigid constitution, a single chamber legislature elected by universal suffrage, a parliamentary executive, and subject to the Rule of Law.† But whether any elements of this Constitution will survive the triumph of the Nationalists in 1939 it is impossible to foretell.

* The text of the Constitution is among the Public Documents in *Annual Register* for 1931.

† See summary of classification on p. 73, below.

(c) *A New Constitution in Soviet Russia*

It is a fact of some interest that, while, during the last few years, Italy and Germany have been moving away from documentary constitutionalism, Soviet Russia has revived it, for a new Constitution for the U.S.S.R. was drafted by Stalin and adopted in 1936 by the All-Union Congress of Soviets at Moscow. This Constitution,* which replaces the original Soviet Constitution of 1918,† may be destined to be only a paper Constitution like its predecessor, but it is proper to include some remarks on it here, because it has features of great interest to students of politics, and it may be that western democracy has something to learn from it, granting the need to vitalise the democratic structure if it is to survive.

Chapter I of the new Constitution concerns Social Organisation and states that the U.S.S.R. is a Socialist State of Workers and Peasants (Article 1), that the Union's "political foundation is formed by the Soviets of Toilers' Deputies" (Article 2), and that all power belongs to "the toilers of the town and village in the form of Soviets of Toilers' Deputies" (Article 3). Articles 9 and 10 state that, alongside the socialist system of economy, "the law allows small private economy of individual peasants and handicraftsmen based on individual labour and excluding the exploitation of the labour of others," and that "the personal ownership by citizens of their income from work and savings, home and auxiliary household economy, of objects of domestic use, household economy, as well as objects of personal use and status, is protected by law." Article 12 lays down once more the basic principle: "He who does not work shall not eat," who wishes that the U.S.S.R. is realising the principle of Socialism, in that from each according to his ability, to each according to his needs.

General Framework of the Constitution covers the State Organisation in working order. It bears an extraordinary resemblance to the therefore be useful discussions discussed in the text of this book.

By the Constitution, the U.S.S.R. is a democratic Republic of Soviets, in full in Public Documents in *Annual Register*

* *Soviet Communism : A New Civilisation?* Vol. 1,
† *Soviet Communism : A New Civilisation?* Vol. 1,

Article 13 states that the U.S.S.R. is a federal state formed on the basis of the voluntary association of eleven Soviet Socialist Republics (the Russian Soviet Federated Socialist Republic, the Ukraine, White Russia, Georgia, Armenia, etc.) some of which include, besides the main state, autonomous republics and autonomous provinces. The powers belonging to the Federal Authority are stated categorically in Article 14; Article 15 states that "outside of these limits each Union republic exercises independently its state power"; while further Articles state that "every Union republic has its own constitution" (Article 16); "each Union retains its rights freely to secede from the U.S.S.R." (Article 17); and that "the territory of the Union republics may not be changed without their consent" (Article 18).

Chapter III refers to the Supreme Organs of State Power in the Union. The supreme organ is the Supreme Council which replaces the old Congress of Soviets of the Union. The Supreme Council consists of two Chambers, namely, the Council of the Union and the Council of Nationalities, the first elected by the citizens of the U.S.S.R. on the basis of one deputy for 300,000 of the population, and consisting of 600 members, the second consisting of deputies appointed by the Supreme Councils of the Union on the basis of ten deputies from each, with five from each autonomous republic and two from each autonomous province, making a total of 242 members. Both Councils are elected for four years. They have equal legislative power and a simple majority in each is enough to give approval to a law. Sessions are convened by the Presidium of the Supreme Council twice a year (normally), extraordinary sessions may be called for special purposes.

Article 47 establishes a supreme court or conciliation commission in the event of disagreement between the Chambers: if no agreement is reached by this court and there is still no agreement of the Chambers, then new elections are held. The Presidium consists of a Chairman, four Vice-Chairmen, the Secretary and 31 Members elected by the Supreme Council at a joint session of both Chambers (Article 48). It

has wide powers, especially between sessions, including the power to declare war in the event of an armed attack.

Chapter V describes the organs of administration. Under this head the Constitution sets up what appears to be in effect a Cabinet system. The supreme Executive and Administrative Organ is the Council of People's Commissars which is responsible to the Supreme Council (Parliament) which creates it. But Commissars can be made and unmade by the Presidium for later confirmation by the Supreme Council. Yet all this seems to be a cloak for the continuation of party dictatorship, for the executive authority is still vested in the Presidium of the Supreme Council (Article 49), an executive committee of 37 members which, as already stated, acts between the sessions of the Supreme Council.

The Electoral System is laid down in Chapter XI. All citizens of 18, men and women, except those disqualified of electoral rights by the Courts, have the right to vote. A new electoral law was consequently adopted in July, 1937, and the first elections were held for the new Supreme Council on December 12 by secret, general and direct voting.* Yet the only candidates nominated were Stalinists, for whom over 90 per cent. of the votes were cast, which merely demonstrates that, as an instrument of true democracy, the whole constitution is vitiated by the fact that, in practice, no political group other than the Communists is tolerated.

VI. THE DECLINE OF THE LEAGUE OF NATIONS

The flight from internal constitutionalism which we have observed in two of the leading States on the Continent has led, as was almost inevitable, to a serious breakdown of the machinery for the constitutional conduct of external affairs which it was the purpose of the League of Nations to encourage and maintain, and has brought about a revival of that international anarchy which the League was instituted to overcome. Germany left the League in 1933 as soon as Hitler had come to power and as a result of the refusal of the Powers to meet

* See *Annual Register* for 1937, pp. 192-3.

Germany's demand for equality at the Disarmament Conference at Geneva in that year. Italy gave notice of withdrawal from the League in 1937 as a result of the attempt of certain Powers to impose economic sanctions upon her when she attacked Abyssinia. The attempt, which was half-hearted, completely failed of its purpose. Ethiopia was conquered and added to the Empire of Italy, and by 1939 all the important States had recognised the conquest and annexation of Abyssinia, although it was carried out in the teeth of the League and of the application of sanctions as constitutionally provided in Article 16 of the Covenant of the League.

Thus at once the League was weakened in its membership, the hopes of a constructive policy of collective security evaporated, and Article 16 fell into discredit as the result of the failure of the only real attempt to apply it. The failure of the attempt to apply sanctions raised the whole question of the reform of the Covenant, and the Assembly adopted a resolution on July 4, 1936, requesting the Council to invite Governments to send in "any proposals they may wish to make in order to improve, in the spirit and within the limits laid down, . . . the application of the principles of the Covenant." In October, 1936, the Assembly appointed a Committee of twenty-eight to go into the matter and report. This Committee held its first meeting in September, 1937, and discussed three vital questions, namely, the separation of the Covenant of the League from the Peace Treaties, the co-ordination of Peace Pacts made outside the machinery of the League, and the universality of the League. On the first question the Committee of Twenty-eight requested a Committee of ten jurists to suggest the means of carrying out such a separation, and after full discussion this Committee of ten jurists prepared a draft resolution for the Assembly declaring that the Covenant had "an independent existence" (as, of course, had always been held to be the case by the States which joined the League later than the time of its foundation). The Committee of Twenty-eight transmitted the draft resolution to member-governments, and in 1938 the Assembly adopted resolutions embodying the amendments and a Protocol was opened and signed at once by

twenty-eight states. Britain ratified it on January 20, 1939. As it was a Covenant Amendment it awaited ratification by the Council and a majority of the Assembly.

On the other two questions the Committee of Twenty-eight reported, and the Assembly adopted its recommendations in resolutions carried in October, 1937, to the effect (1) that, in the event of war, the League should take immediate steps to associate in its efforts for peace those States which are not members of the League but are mutually bound by covenants (*e.g.* the Pact of Paris of 1928, *i.e.* the Kellogg Pact) whose common aim is to maintain peace; and (2) that it was desirable that the views of non-member States should be obtained on the reform of the League as and when opportunity offered.*

These discussions indicate, among other things, the persistence of the tendency of the Great Powers, referred to in the text,† to work outside the League in their larger diplomatic activities. The withdrawal of Germany and Italy from the League has been followed by their diplomatic union in the so-called Rome-Berlin "axis" and by the adhesion of Italy in 1937 to the Anti-Comintern Pact signed originally by Germany and Japan in 1936.‡ These extra-League alignments and the manifest impotence of the League in face of the aggressive events of the last few years almost inevitably drive the Western Powers to seek security in a defensive pact. Thus the wheel turns full circle and the world faces once more all the evils of a revival of the balance of power.

The question naturally emerges whether some reform of the League of Nations would restore its prestige sufficiently to preserve the peace of the world, and in these circumstances it is perhaps not surprising to observe a powerful drift of unofficial opinion in the direction of some kind of federalism, such as is advocated in the text, to save the situation.§ "The chief mistake," says one writer,|| speaking of the Covenant of the

* See *Essential Facts about the League of Nations*, pp. 53-55; *The League from Year to Year, 1937*, pp. 37-39. See also, on Sanctions and Abyssinian Crisis, Jacks' *Co-operation or Coercion?*, p. 96. The Author is also indebted to the Secretary of the League of Nations Union for a helpful note on the question of the separation of the Covenant from the Peace Treaties.

† See below, p. 339.

‡ See Note 54, p. 372.

§ See below, pp. 350 ff.

|| L. P. Jacks, *op. cit.*, p. 96

League, "was to attempt to impose upon sovereign states a system of coercion which their nature as sovereign states forbids them to tolerate." Yet in this same book the author has a later chapter, entitled "An Historical Parallel from the United States,"* which is precisely the starting point for the argument of another writer in a remarkable book published in 1939,† in which the author boldly advocates the federal union of fifteen democracies—namely, the U.S.A., Great Britain, five Self-Governing Dominions of the British Commonwealth, France, Belgium, the Netherlands, Switzerland, Denmark, Norway, Sweden, and Finland—on the model of the United States of America.

"For the condition of the whole human species to change overnight immensely for the better," says this author, "the American President need only invite the fourteen other leaders of democracy to join him in declaring the undeniable: that their common supreme unit of government is the individual free man; that their common means to their common end is the union of free men as equals; that the existence of a democracy is proof in itself that the people of it want union; that democracy and union are one and the same; that the responsibility facing 300,000,000 free men to-day is the one that faced 30,000,000 in 1861 and 3,000,000 in 1787—the responsibility of choosing for themselves and their children whether to slip backward with the misery-making absolutist principle of the sovereignty of nations, or to continue forward with the richest political principle men have ever found, the principle of free union through the equal sovereignty of man. The American President need only ask the others to join him in making this Declaration of the Dependence of free men on themselves and on each other, and in convoking then our Union's constituent assembly."‡ Though President Roosevelt did not adopt this line of action, he did, in fact, in the

* *Ibid.*, pp. 134 ff.

† C. K. Streit: *Union Now*.

‡ *Ibid.*, p. 280. The Author had already outlined this idea in 1937, in Chapter XIII of *The League and the Future of the Collective System* (see Bibliography) entitled "Reform of the Covenant is Not Enough." See also H. N. Brailsford: *Towards a New League*, especially pp. 58-59 and 63-64.

Spring of 1939, approach the European Powers with a proposal for a Peace Pact for ten years, or even twenty-five years. But the President of the United States speaks for a democratic conception of society fundamentally opposed to the "military economics" of Germany and Italy, and this being so it is questionable whether a solution on these lines can be found in time to save the world from a new holocaust. What can hardly be doubted is that, if the western world is again involved in a general armed conflict, parliamentary constitutionalism, as we know it, would be unlikely to survive the destruction of civilisation that would result, though men in such a war were fighting for "liberty, equality and the pursuit of happiness."

•

BOOKS FOR FURTHER STUDY

(A Selection of Books published since 1930)

BRITAIN AND THE BRITISH COMMONWEALTH

- ANSON, SIR W. R. : *The Law and Custom of the Constitution*. Vol. II. Fourth Edition. (Clarendon Press, Oxford, 1935.) Vol. II of this standard work, entitled "The Crown," first published in 1892, revised and brought up to date by A. Berriedale Keith, and issued in two Parts. The revision makes Anson once more a most valuable text-book for students of the British political system.
- BASSETT, R. : *The Essentials of Parliamentary Democracy*. (Macmillan, 1935.) See specially Part Two : "Recent Tendencies in British Politics," and a Section on Fascism and Communism in Britain, pp. 240-252.
- BUELL, R. L. (Edited) : *Democratic Governments in Europe*. (Nelson, 1935.) In three Sections : see Section 1, "English Government and Politics," by E. P. Chase.
- GREAVES, H. R. G. : *The British Constitution*. (Allen and Unwin, 1938.) See specially : Section of "Boards and Commissions as Administrative Bodies" (pp. 176-187).
- JENNINGS, W. IVOR : *Cabinet Government*. (Cambridge University Press, 1936.) The latest standard work on the subject and the natural successor to Walter Bagehot's *English Constitution*.
- KEITH, A. BERRIEDALE : *The Governments of the British Empire*. (Macmillan, 1935.) *The Dominions as Sovereign States*. (Macmillan, 1938.) Standard works, both invaluable and indeed indispensable for a full understanding of the peculiarities of the powers and governmental systems of the various parts of the British Commonwealth of Nations, and their relation to one another.
- LASKI, H. J. : *Parliamentary Government in England*. (Allen and Unwin, 1938.) A commentary dealing with those aspects of the working of Parliamentary Government "most relevant to the pressing problems of our time."

FOREIGN STATES

- BUELL, as above : Section 2 : "French Government and Politics," by R. Valeur. Section 3 : "Swiss Democracy," by R. L. Buell.
- FINER, H. : *Mussolini's Italy*. (Gollancz, 1935.) An exhaustive study of the growth and practice of Fascism in Italy.
- LICHTENBERGER, H. : *The Third Reich*. (Duckworth, 1938.) An authoritative critique by a French scholar, translated by Koppel S. Pinson, of the rise and establishment in power of National Socialism in Germany. Some valuable original documents are given in the Appendices.

- ROBERTS, S. H. : *The House that Hitler Built*. (Methuen, 1937.) An exhaustive and most readable study of Nazi Germany from information gathered at first hand.
- WEBB, S. and B. : *Soviet Communism : A New Civilisation?* (Longmans, Green, 1935.) Standard work in two volumes on every aspect of the government of post-War Russia up to 1935.

SPECIAL ASPECTS

- DANIELS, S. R. : *The Case for Electoral Reform*. (Allen and Unwin, 1938.) A critical study of Proportional Representation in all countries.
- LIPPMANN, W. : *The Good Society*. (Allen and Unwin, 1937.) A defence of democracy and a criticism of a planned society leading to dictatorship.
- SABINE, G. H. : *A History of Political Theory*. (Harrap, 1937.) Specially Chapters 31-34 on Liberalism, Marxism, Communism, and Fascism.
- SILONE, IGNAZIO : *The School for Dictators*. (Cape, 1939.) A study of dictatorship in the form of a Socratic dialogue, translated from the Italian.
- SPENDER, J. A. : *The Government of Mankind*. (Cassell, 1938.) A history of the ideas and practice of government from the first state in Egypt to modern Parliamentarism and "the Age of Ideologues"—Hegel, Marx, Mussolini, and Hitler.

INTERNATIONALISM AND THE LEAGUE OF NATIONS

- BRAILS福德, H. N. : *Towards a New League*. (New Statesman and Nation, 1936.) Especially pp. 58-64 on "The Federal Solution."
- JACKS, L. P. : *Co-operation or Coercion? The League at the Crossways*. (Heinemann, 1938.) Especially Chapter XI: "The Most Promising Institution in the World."
- STREIT, C. K. : *Union Now*. (Cape, 1939.) A demand for a federal union, on the American model, of fifteen democracies.
- WILLIAMS, SIR J. F. : *Some Aspects of the Covenant of the League of Nations*. (Oxford University Press, 1934.)
- The Future of the League of Nations*. A Record of a Series of Discussions held at Chatham House. Published for the Royal Institute of International Affairs, by Oxford University Press, 1936. The contributors include Sir Norman Angell, Lord Arnold, Marquis of Lothian, Harold Nicholson, Lord Ponsonby, H. G. Wells, and Leonard Woolf.
- The League and the Future of the Collective System*. Problems of Peace: Eleventh Series. (Allen and Unwin, 1937.) Articles by various contributors including one (Chapter XII) by C. K. Streit, entitled "Reform of the Covenant is not Enough," in which are first adumbrated the ideas on which the Author enlarges in *Union Now* (see above).

SOURCE BOOKS

- Constitutions of All Countries*. Compiled by the Foreign Office and published by H.M. Stationery Office. Vol. I. *The British Empire* (1938). Contains full text of the Constitution of every part of the British Commonwealth beyond Great Britain. Vol. II. *Continental European Countries and Their Dependencies*. (Forthcoming.)

- Essential Facts about the League of Nations.* Prepared by the Information Section of the League of Nations Secretariat and published at Geneva. Ninth Edition (revised) 1938. Gives full factual information down to December 31, 1937. Contains full text of Covenant. See specially pp. 53-55 for facts about reform of League.
- HITLER, ADOLF: *Mein Kampf*. Unexpurgated Edition, translated into English by James Murphy. (Hurst and Blackett, 1939.) Indispensable for the sources of inspiration of Nazi policy.
- The Annual Register*, for Years 1930-1938. Edited by M. Epstein and published by Longmans, Green. Contains, besides outline of events, full text of many important and valuable documents of constitutional interest.
- Whitaker's Almanack*. Complete, not abridged, edition, especially for years 1938 and 1939.

SUBJECTS FOR ESSAYS

1. In what respects has the working of the Party System changed in Great Britain since 1930?
2. How far is it true to say that the Ministers of the Crown Act of 1937 legalised in documentary form a previously long-standing convention?
3. Explain the significance of the Statute of Westminster of 1931.
4. What are the essential differences between the Constitution of the Irish Free State of 1922 and that of Eire of 1937?
5. What advances on the Government of India Act of 1919 have been made by the Act of 1935 towards Dominion Status for India?
6. Compare the governmental problems raised by the Federal System in the United States with those in the Commonwealth of Australia during the decade 1929 to 1939.
7. "Following his accession to power, the *Führer* consciously refused to give the Third Reich a written constitution." Show by an account of political events in Germany between 1933 and 1939 that this statement is true.
8. "Fascism affirms the immutable, beneficial, and fruitful inequality of mankind." To what extent has the establishment of the Corporative State in Italy implemented this dogma in a political system?
9. Explain the decline in prestige of the League of Nations in the period 1933 to 1939, and discuss the practicability of restoring a system of collective security.
10. "A constitution necessarily rests on acquiescence, whether it is established by referendum or by tacit approval or by force." In the light of this statement, discuss the essential differences between democratic and authoritarian systems of government in the modern world.

•

PART I

THE SCIENTIFIC AND HISTORICAL APPROACH TO THE SUBJECT

•

MODERN POLITICAL CONSTITUTIONS

CHAPTER I

THE MEANING OF POLITICAL CONSTITUTIONALISM

I.—INTRODUCTORY

THE study of political constitutions is a branch of political science or the science of the state. Political science, being the science of the structure and government of political communities, is a study of society viewed from a special standpoint, and is, therefore, intimately related to the other social sciences which may be classified as follows :

- (1) Sociology, which is the study of all forms, civilised and uncivilised, of human association.
- (2) Economics, which is the science of man's material well-being.
- (3) Ethics, which is the science of what man's conduct ought to be, and why.
- (4) Social Psychology, which is the science of the behaviour of the human animal in his social relationships.

Political science takes something from all these, for it is concerned with a particular type of human association, and is therefore partly sociological ; with the material interests of the members of the state, and is therefore partly economic ; with the moral cause and effect of state action, and is therefore partly ethical ; and with the play of individual minds, whether of governors or governed, and is therefore partly psychological.

Nevertheless, it is a distinct science, with its own materials and data. These are found in the history of states and in their existing forms. [The political scientist is concerned with the origin and development of the state, with its nature and organisation, with its purpose and functions, and with the theory of the state and its possible forms.] Now the student of political constitutions is concerned with all these facets of the subject in a certain degree. He is interested chiefly in the institutions which the state builds up for its peace and progress, without which the state could not maintain itself, any more than society could maintain itself without the state. Our subject here, therefore, may be divided into the four parts of which we have just spoken as belonging to political science as a whole and which we may summarise as historical, descriptive, applied and theoretical.

It is our purpose to take certain highly developed modern states and to examine their institutions, which, taken together in each case, are called the Constitution. Our mode of inquiry is what is usually called the comparative method. We shall attempt to classify the constitutions we are to examine on the basis of certain likenesses and differences arising out of their history and existing form. But before doing this it will be necessary first to define the principal terms we must use, and secondly to trace in outline the general history of political constitutionalism.

II.—SOCIETY

A study of any aspect of the state must begin with a definition of society, since a state is a society politically organised. A society may be defined as any association of human beings. In such a community as, say, Great Britain or France, there is a vast system of relationships among men and women dividing them socially into groups, which by no means coincide with their political grouping. Sometimes, and more frequently, the group is very much smaller than the state, but often it passes right across the political frontier, and this is especially the case in commercial relationships.

The fundamental units of the association of the members of a community, considered socially and not politically, may be said to be three. The first is the family, the association into which men are born. The second is the type of association to which men are compelled to belong through some strong incentive, such as economic interest or social expediency, as, for example, a trade union or professional society. The third is what may be called the voluntary association, such as a club or (at any rate under modern conditions) a church. Now, while it is true that the state does not use its force, as a rule, actively to interfere with such associations as these, the fact remains that it could and is sometimes forced to do so in the interests of social health. While, on the one hand, such associations as we have mentioned play an important part in influencing and determining state action, on the other, many of them could not continue to exist without the conditions which the agency of the state alone can enforce, such as marriage laws, rights of property, laws of contract, and so on.

III.—THE STATE

Yet the state is something more than a mere collection of families, or an agglomeration of occupational organisations, or a referee holding the ring between the conflicting interests of the voluntary associations which it permits to exist. Society, indeed, does not exist for the sake of the state, yet society could not exist without the state, because society—made up of families, clubs, churches, trade unions, etc.—is not to be trusted to run itself without the ultimate arbitrament of force. All associations make rules and regulations for their conduct, and when men are associated politically these rules and regulations are called laws, the power to make these being the prerogative of the state and of no other association. Thus, in the words of Professor Maciver, a “state is the fundamental association for the maintenance and development of social order, and to this end its central institution is endowed with the united power of the community.” But this definition might conceivably cover pastoral society which, indeed,

found a bond of union in the patriarch or head of the family who, in some sort, discharged the powers of government. Such a society, however, lacked territoriality, an indispensable condition of true political organisation, a condition emphasised by Professor Hetherington when he says: "The state is the institution or set of institutions which, in order to secure certain elementary common purposes and conditions of life, unites under a single authority the inhabitants of a clearly-marked territorial area." But what is this "united power of the community" in the first, this "single authority" in the second definition? It is the power or authority to make law. So we come to the definition given by President Wilson: "A state is a people organised for law within a definite territory."

IV.—LAW AND CUSTOM

The essence of a state, then, as distinct from all other forms of association, is the obedience of its members to the law. The state being a territorial society divided into government and governed, we may quote a definition of law as "the general body of rules which are addressed by the rulers of a political society to the members of that society which are generally obeyed"; or, again, as "a command to do or abstain from doing a certain class of acts, issued by a determinate person or body of persons acting as a body, and involving the announcement, express or tacit, of a penalty to be inflicted on any persons who may disobey the command: it being assumed that the individual or body announcing the penalty has the power and purpose of inflicting it."

The force at the back of law has always been a social force. The social force by itself, however, is merely custom. Wherever a society, however rudimentary, exists, there will develop customary ways of carrying on social activities. A body of customs develops, forming a sort of unwritten code enforced by some pressure, such as parental or religious authority, or the opinion of the community concerned. Some of these customs may be found to have such a wide application

for the general welfare that some stronger pressure than mere social authority or opinion is necessary to get them universally obeyed. These customs then cease to be social and become political—in fact, laws—being enforced by a constituted government.

That, then, is law, by whatever method established, which is enforced in courts properly constituted by the state. Its source may be (1) custom—*i.e.* unwritten law become enforceable by perpetual usage; (2) the written decisions of earlier judges—*i.e.* what is sometimes called case-law or judge-made law; (3) statute—*i.e.* by enactment of the legislature or parliament of the state.

V.—SOVEREIGNTY

We have said that the peculiar attribute of the state as contrasted with all other units of association is the power to make laws and enforce them by all the means of coercion it cares to employ. This power is called sovereignty. This term is a highly controversial one, and we shall have a good deal to say about it later on. At this point it will suffice to define it in its double aspect—internal and external. Internally it means the supremacy of a person or body of persons in the state over the individuals or associations of individuals within the area of its jurisdiction. Externally, it means the absolute independence of one state as a whole with reference to all other states. Etymologically the word sovereignty means merely superiority, but when applied to the state it means superiority of a special kind, such superiority, that is to say, as implies law-issuing power. In seeking to find in any state where the sovereign power lies we must distinguish three ways in which the term is used; thus it may mean (1) the titular head of the state, *e.g.* in the United Kingdom the King, in France the President of the Republic; (2) the legal sovereign—*i.e.* the person or persons who, according to the law of the land, legislate and administer the government—*e.g.* in the United Kingdom, the King in Parliament; (3) the political or constitutional sovereign—*i.e.* the body of persons in whom

power ultimately resides, sometimes called the collective sovereign, and in the modern constitutional state found in the electorate or voting public. Here we are chiefly concerned, for the moment, with the second of these aspects of sovereignty, though the third, as we shall see later, plays a tremendously important part in the modern state.

Lord Bryce gives an excellent example of the process whereby the true sovereign in any state may be discovered by taking the case of an Englishman :

"A householder in a municipality," he says, "is asked to pay a paving rate. He inquires why he should pay it, and is referred to the resolution of the Town Council imposing it. He then asks what authority the Council has to levy the rate, and is referred to a section of the Act of Parliament whence the Council derives its powers. If he pushes curiosity further, and inquires what right Parliament has to confer these powers, the rate collector can only answer that everybody knows that in England Parliament makes the law, and that by the law no other authority can override or in any wise interfere with any expression of the will of Parliament. Parliament is supreme above all other authorities, or, in other words, Parliament is Sovereign."

We shall see later that the sovereign power is not always so easily traced as in this case, but if we remember that that person or body of persons which is habitually obeyed in a state—and this implies the control of the armed forces of the state—is the sovereign power, we have all we need to proceed to the next definition.

VI.—GOVERNMENT

In order to make and enforce laws the state must have a supreme authority. This is called the Government. Government is the state's machinery: without it the state could not exist, for "government is, in its last analysis, organised force." Government is, therefore, "that organisation in which is vested . . . the right to exercise sovereign powers." Government, in the broad sense, is something bigger than a special body of ministers, a sense in which we colloquially use it to-day, when we refer to the Cabinet in our own country,

for example, as the Government of the day. Government, in the broader sense, is charged with the maintenance of the peace and security of the state within and without. It must, therefore, have, first, military power, or the control of armed forces; secondly, legislative power, or the means of making laws; thirdly, financial power, or the ability to extract sufficient money from the community to defray the cost of defending the state and of enforcing the law it makes on the state's behalf. It must, in short, have legislative power, executive power and judicial power, which we may call the three departments of government.

VII.—THE LEGISLATURE

The three departments of government just mentioned all play their part in the exercise of the sovereign power in a modern state. They are always intimately connected with one another, in some states more than in others, and yet they are everywhere distinct. The legislature is that department of government concerned with the making of laws, in so far as the law requires statutory force. Logically, law-making precedes its execution, and therefore the legislature is, at first sight, of greater importance than the executive which administers the law, or the judiciary which punishes its transgressors. But this is not always the case, since, as we shall see later, the powers of the legislature to control the other two departments vary. None the less, we may agree with the American authority who has described the legislative function as "the great and overruling power in every free government."

In modern constitutional states the legislative power is in the hands of a parliament consisting, as a rule, of two Houses, one or both of which are elected by the people. Closely associated, therefore, with the composition of the legislature in a modern state is the nature of the electorate, which we have already referred to as the political sovereign. The functions of the legislature increase with the growing complexity of modern society and with its consequent demands upon the law-making authority for the social good. In all

states this pressure is brought indirectly to bear upon the action of the legislature by the very nature of society, in some more directly through a vital electoral system, and in others even more directly by the constitutional powers of the people to initiate legislation or to approve or disapprove it after its passage through parliament. The differences among modern legislatures, as we shall see later on, form a most important ground for the classification of existing states.

VIII.—THE EXECUTIVE

The term executive is frequently used rather loosely, sometimes to designate merely the chief minister (as, for example, the President in the United States), sometimes to include the whole body of public servants, civil and military. In the latter sense a better term is administration. Here we use the word executive to mean the head of the government together with his ministers, generally called a Cabinet, or, in other words, that body in the state to which the Constitution gives authority to execute the law when it has received the sanction of the legislature. Though technically it is the legislature which initiates policy, in modern practice the executive formulates the bulk of it, and then presents it for approval to the legislature.

Such a body is bound to exist in any state, but particularly in the modern state, which corresponds to a large national community, and therefore requires that its chief ministers shall hold wide powers. The great distinction in composition between the legislature and the executive is a numerical one. The legislature is a large body, the executive (in the sense here indicated) is a small one, and necessarily so, since the legislature is a deliberative assembly whose business is to debate public matters, while the executive is a collection of ministerial heads of departments whose business is to act with decision and promptness. In some cases, as we shall see, the executive is controlled by the legislature, in others it exists apart from it, and this difference forms one of the chief grounds of our classification.

IX.—THE JUDICIARY

The judiciary is the department concerned with the infliction of penalties upon those who infringe the law which may be either passed in the form of statutes by the legislature or permitted by it to exist. As one authority puts it, it is the business of the judiciary to "decide upon the application of the existing law in individual cases." Such judicial power is of the essence of government, which, as we have seen, is by its nature coercive. The judiciary always consists of a body of judges acting individually or in groups at the centre, or in outlying parts of the state. The powers of judges greatly vary from one state to another. In some cases, as in the United Kingdom, the judges are bound to apply any law passed by the legislature, even though such law should destroy all precedent decisions of the courts. In others, as in the United States, a supreme court of judges can frequently override the enactments of the legislature by refusing to apply the laws in particular cases on the ground that it is constitutionally beyond the power of the legislature to enact them.

In most states the judicial department of government is, to a greater or less degree, a creative force actually developing, in the course of its work, especially in Anglo-Saxon countries, an important element in the body of the law under which modern communities are governed. Law is everywhere the province of experts, and for this reason judges generally have a security of tenure and a freedom from interference by the other two departments of government which is one of their most valuable possessions, and, indeed, of the utmost importance to the community at large. At the same time, the executive always has certain judicial powers, chiefly connected with the granting of pardons and reprieves and the enforcement of discipline in the army, navy, air force, and the civil service generally, but this latter is, as a rule, ultimately subject to control by the legislature, to which belongs the power to grant or withhold supplies of money for the maintenance of these forces.

X.—THE CONSTITUTION

It is in the variation of the composition and relationship of these three departments of government that states differ. The modern constitutional state, which is the one with which we shall henceforth be concerned, is one which has developed a very definite set of rules and regulations for the working of these three functions of government. Lord Bryce defined a constitution as "a frame of political society, organised through and by law, that is to say, one in which law has established permanent institutions with recognised functions and definite rights." Again, a constitution may be said to be a collection of principles according to which the powers of the government, the rights of the governed, and the relations between the two are adjusted. The constitution may be a deliberate creation on paper; it may be found in one document which itself is altered or amended as time and growth demand; or it may be a bundle of separate laws given special authority as the laws of the constitution. Or, again, it may be that the bases of the constitution are fixed in one or two fundamental laws while the rest of it depends for its authority upon the force of custom.

But whatever its form, a true constitution will have the following facts about it very clearly marked: first, how the various agencies are organised; secondly, what power is entrusted to those agencies; and thirdly, in what manner such power is to be exercised. Just as a human body is said to have a constitution consisting of organs which work harmoniously when the body is in health and unharmoniously otherwise, so a state, or body politic, is said to have a constitution when its organs and their functions are definitely arranged and are not subject, for example, to the whim of some despot. The object of the constitution is to limit arbitrary power, or, in other words, to guarantee certain rights to at least some of the governed. In short, it attempts to determine the exact position of the sovereign power.

XI.—THE CONSTITUTIONAL STATE

From these remarks we should know what to include in, and what to exclude from, the category of constitutional states. In the process of guaranteeing rights to the governed, which, as we have said, is the object of a constitution, the modern constitutional state tends to become democratic. Democracy implies that "government shall rest on the active consent of the governed," that is to say, their consent or dissent shall have real outlets for expression at elections, on the platform, in the press and so forth. ¶ By democracy we therefore mean a system of government in which the majority of the grown members of a political community participate through a method of representation which secures that the government is ultimately responsible for its actions to that majority. § This representative democracy guarantees popular sovereignty upon which the constitutional state must necessarily be based. Further, since the wresting of popular rights generally arises from a sense of unity in the community concerned, we find that the modern constitutional state is national in its background. By nationalism is here meant that force which holds a community in a defined territory together for the maintenance of rights against arbitrary power within the state and for the perpetuation of its independence against aggression from without.

Our conclusion, then, being that a constitutional state is, under modern conditions, a national democratic state, we must exclude from a list of constitutional states any one in which, though it may possess a constitution, a temporary dictatorship is set up (as, for example, in post-War Spain, where the Constitution is said to be suspended *); any one in which a factious military leader can work his individual will for the time being (as, for example, in some of the states of Latin America); any one in which the national democratic

* In January, 1930, General Primo de Rivera (Marqués de Estella), after six years of rule at the head of the Directory, resigned the Dictatorship, and the King called upon General Berenguer to take over the government. This was considered to portend a reversion to constitutional government, a movement much discussed in the later months of de Rivera's period of power. The first acts of the new government point to the likelihood of a gradual restoration of the Constitution. (1)

constitution exists merely on paper, while, in fact, arbitrary power is held by a comparatively small body of self-appointed chiefs (as, for example, in Bolshevik Russia). Our list of constitutional states, further, will not include any autocracy, *i.e.* any state in which one man rules without responsibility, as in pre-War Russia, or any form of social organisation without political organs, such as is conceived by Syndicalists or extreme Direct-Actionists, on the one hand, or by philosophical anarchists, like Herbert Spencer and Prince Kropotkin, on the other.

The constitutional states, whose history and existing form it is our purpose to examine in the following pages, are all nationalistic in background and democratic in tendency, though some of them may not be fully developed in either or both of these respects. Some of these states have a very long history; others have emerged in quite recent times. In any case, the roots of constitutionalism are very old, while its evolution in later times has arisen out of a political Liberalism common to the whole of the Modern World. It is now our purpose first to trace the growth of this constitutionalism from its beginnings and then to attempt a classification of the constitutional states of the Western World, based upon the likenesses and differences which such a historical sketch will emphasise.

READING

GETTELL : *Readings in Political Science*, pp. 16-24, 59-64, 127-145, 174-194, 282-6, 341-3, 363, 384-7, 501-503.

JENKS : *State and Nation*, Ch. i.

LASKI : *Grammar of Politics*, Pt. I, Ch. i.

LEACOCK : *Elements of Political Science*, pp. 1-19, 48-66, 135-219.

LOWELL : *Government of England*, Vol. I, Ch. vii.

MACIVER : *Modern State*, pp. 3-22.

SIDGWICK : *Elements of Politics*, Chs. i, ii, xix.

WILSON : *State*, pp. 26-31, 69-92.

BOOKS FOR FURTHER STUDY

HETHERINGTON AND MUIRHEAD : *Social Purpose*.

MACIVER : (1) *Community*. (2) *Elements of Social Science*.

SEELEY : *Introduction to Political Science*.

SUBJECTS FOR ESSAYS

1. State the divisions of social science and explain the province of each.
 2. How do you differentiate society and state ?
 3. Define the word "state" in its ancient and modern connotations.
 4. Name the various types of law and show how they have developed in the modern state.
 5. Explain the meaning and importance of the term "sovereignty."
 6. To what extent is it right to describe government as the mechanism of the state ?
 7. "Government is, in its last analysis, organised force." Discuss this statement in reference to the modern state.
 8. Name the three great departments of government and explain clearly the province of each.
 9. What is a political constitution ? Do you consider it necessary to the health of a body politic ?
 10. How far is it true to say that modern political constitutionalism has a nationalistic background and a democratic tendency ?
-

CHAPTER II

THE ORIGIN AND GROWTH OF THE CONSTITUTIONAL STATE

I.—INTRODUCTORY

THE rise of the constitutional state is essentially an historical process, and the student of the subject will find his chief materials in history. These materials are to be found not only in the history of institutions themselves, but also in the history of the political ideas which have prompted their development or which have been stimulated by institutional growth; for to consider what was intended to be is often as important as to consider what actually was, and this is even more true of those institutions, such as we are studying now, which are still being moulded and remoulded in the very age in which we live. Not only in the past, but also in the present, the discussion of the existing régime with a view to its improvement, or the analysis of the existing organisation with a view to definition, is what forms the basis of the bulk of political philosophy.

[We have defined a constitution as a frame of political society organised through and by law, in which law has established permanent institutions with recognised functions and definite rights, and a constitutional state as one in which the powers of the government, the rights of the governed and the relations between the two are adjusted. Now this kind of state is at once very old and very new, as old as Greek antiquity and as new as the twentieth century. The oldest form of it of which we have any record is to be found in the Ancient World of the Greeks and Romans, but it was very different from ours. Modern constitutionalism, as we have said, has

developed from the two-fold basis of nationalism and representative democracy. But nationalism is of comparatively recent growth. The national constitutional state could not have grown in the soil of the Ancient World. Nationalism as a practical political programme has developed within the mould of the state as it emerged in Europe in the fifteenth century. For the modern states-system of Europe began with that great era of change which we call the Renaissance. The significance of that series of revolutions in the spheres of letters, arts, science, maritime activity and politics, is best apprehended by studying what happened at that time to the state. The etymology of the word Renaissance does not help us much here, for if this period was marked by a rebirth of ancient ideals in learning, it was only very slightly so marked in politics. In a quite supreme sense it was, in this case, the death of something old and the birth of something new. What, in fact, emerged at this time was the principle of external sovereignty, and this marked a breach with the past, immediate and remote, of the profoundest political significance, as we shall now see.

II.—GREEK CONSTITUTIONALISM

It is true that political separatism had been a marked characteristic of Greek life. Indeed, it was their almost religious devotion to the principle of autonomy, or the liberty of the group, which finally engulfed them. But they knew only the City-State, an area generally no larger than, say, an English county and with a population smaller than that of a large English town. The whole political outlook of the Greeks was determined by this fact; so that even the most brilliant political philosophers which Greece produced were incapable of looking beyond this conception of a state. Aristotle, indeed, in laying down what he conceived to be the limits of a true state, said that it should be large enough to be self-sufficing and small enough to permit of all the citizens meeting together in one place.

We may gather from this notion of the citizen how

differently the second principle of our modern constitutionalism—democracy—was conceived by the Greeks. Whereas our nation-state, in developing its democracy, has necessarily introduced the principle of representation, such a principle was utterly unknown to the Greeks. A Greek citizen was actually and in person a soldier, a judge and a member of the governing assembly. Without a limitation of territory and of numbers, such as the Greek City-State implied, this personal discharge of a citizen's functions would have been impossible. This personal service, moreover, presupposed another institution, from which the conscience of modern civilisation recoils, namely, slavery. The ancient Greek was free to be an active citizen because the means of existence, generally speaking, were produced by slaves who were outside the pale of citizenship.

The state to the Greek was his whole scheme of association, a city wherein all his needs, material and spiritual, were satisfied. So that when Aristotle, for example, used the term state he comprehended within it all that we connote by the terms state, society, economic organisation and even religion. To him the state was a spiritual bond, not a mere machinery. "The state exists," said Aristotle, "to make life possible, and continues in order to make life good." To Greek philosophers like Plato and Aristotle there was no opposition between the individual and the state. The state, on the contrary, was the individual's only means of realising his own best ends, and a man could not be a good man unless he were also a good citizen.

The test of good citizenship, for such thinkers, was observance of the laws, or, in other words, the constitution. The law represented a fixed universal good which was a safeguard against individual caprice. In expounding their ideal constitutions both Plato and Aristotle emphasised the importance of political education, in order that the citizen might learn what he had to live up to, and that the state might move from strength to strength without fear of overthrow through the creeping in of anarchy. This is what they found had happened by the unbridled development of

Athenian democracy, and their criticism of the licence into which Athenian liberty had been degraded was the true occasion of those masterpieces of political philosophy, Plato's *Republic* and Aristotle's *Politics*. Plato's solution, as outlined in the *Republic*, lay in an aristocracy of political intellect, a body of "Guardians" qualified to rule through a rigid system of training which should lead up to the creation of his ideal state. Aristotle sought escape from the tyranny of the mob in what he called the "Polity," a type of middle-class government which should strike a mean between the un-realizable, or at least transitory, best and the intolerable worst.

But neither of these solutions was destined to realise itself, and so neither had a chance to show whether it was capable of saving the Greek City-State from extinction. The only possible way of perpetuating the liberty of Greece as a whole was one which never occurred to the Greek writers, though a practical attempt was made to adopt it, namely, by bringing about a wide political union. In attempting this, Athens first formed a league of equal states, called the Confederacy of Delos, but when she attempted to convert this into an Athenian Empire, in which she was in effect to hold the hegemony over the rest, she was set upon by a number of other states, headed by Sparta, because she thus threatened what was conceived as not only the very basis of the free state, but also the sole ground of true happiness. The Greeks never recovered from the wounds self-inflicted in the long civil war (the Peloponnesian War, 431-404 B.C.) which followed, and later fell an easy prey to the Macedonian invaders under Philip II and Alexander the Great.

What Greek political constitutionalism lacked was something which we shall later see to be vital to the continued existence of such a form of government, namely, an ability to move with the changing times and to meet new needs as they manifest themselves. But, although the political constitutionalism of the Greeks thus passed away, their political idealism remained, and it is difficult to see how our present political organisation could have been what it is without the inspiration afforded by this classical example.

III.—THE ROMAN CONSTITUTION

Both Greece, as reconstituted after the Macedonian conquest, and the larger part of the empire founded by Alexander fell eventually within the bounds of the expanding Roman Empire, and it is therefore to Rome that we should next turn in tracing the history of political constitutionalism. Rome, too, was a city-state in its beginnings. But, circled and threatened as it was from its earliest years by hostile states, it was driven into a policy of expansion which did not cease until the Roman Empire came to be coterminous with the civilised world. The importance of Rome in the history of constitutionalism lies in the fact that its constitution played in the Ancient World a part comparable to that played by the British Constitution in the Modern World. "Out of the Republic on the Tiber, a city with a rural territory round it no bigger than Surrey or Rhode Island," wrote Lord Bryce, "grew a World Empire, and the framework of that Empire retained till its fall traces of the institutions under which the little Republic . . . had risen. . . . In England a monarchy, first tribal and then feudal, developed from very small beginnings into a second World Empire of a wholly different type, while at the same time the ancient form of government, through a series of struggles and efforts, guided by an only half-conscious purpose, slowly developed itself into a system monarchical only in name." But, he went on, whereas Rome developed from a republic, partly aristocratic and partly democratic, to a despotism, the development of Britain has been exactly the reverse, from a strong monarchy to what is, in effect, a republic partly democratic and partly plutocratic.

The constitution of Rome was at first a quite determinate instrument of government, and yet nowhere could it be found stated in so many words. Like our own, it was made up of "a mass of precedents, carried in men's memories or recorded in writing, of dicta of lawyers or statesmen, of customs, usages, understandings and beliefs bearing upon the methods of government, together with a certain number of statutes." At first Rome was a monarchy, but later the kings were driven

out and by about 500 B.C. the Republic began clearly to emerge. There followed a long struggle between the Orders (Patricians and Plebeians) which ended (about 300 B.C.) in the establishment of equal rights for the Plebs watched over by officers, specially selected for the purpose, called Tribunes. In this republican constitution there were three elements of government which were supposed to balance and check one another. First, the monarchical element (transferred from the original kings) manifested itself in the office of the Consuls, of whom there were two, elected annually, each with the right to veto the other. Secondly, the aristocratic element was embodied in the Senate, an assembly with, at one time, great legislative powers. Thirdly, the democratic element existed in the meetings of the people in three sorts of convention according to divisions of land or people (curies, centuries or tribes). The theory of this triple division of powers lasted till the fall of the Empire, but, as Rome expanded, it necessarily ceased to be a fact.

The Roman State lasted, in a certain sense, for twenty-two centuries (from the traditional date of the foundation of the City—753 B.C.—to the capture of Constantinople, A.D. 1453), and during that time many changes took place in its constitution. The Roman Constitution, be it remembered, was that of a city-state, and as Rome ceased to be a city-state and became (within the limits of contemporary civilisation) a world-state, the republican form became inconsistent with the facts. For here again, as in the case of Greece, we observe the absence of our two indispensable conditions or presuppositions of modern constitutionalism, namely, representative democracy and nationalism. The democracy of Rome, like that of the Greek city-states, was direct or primary democracy, and the idea of representation was as absent in the one case as in the other. Manifestly, citizenship in this direct sense could not be maintained and at the same time include in its scope the peoples which Rome successively absorbed. Again, a nation could not be moulded out of the heterogeneous mass of peoples which came to compose the Roman world. The Roman method was to destroy nascent local feeling, to “divide

and rule." It did not allow nations to exist and it could not give its subject-peoples a share in the government without introducing the notion of representation, and this it never did.

Thus the old Republican Constitution fell into desuetude, and the conception of it as a nice balance of monarchical, aristocratic and democratic forces was no longer tenable after the great eastward expansion of the second century B.C., though as late as the middle of that century a Greek hostage in Rome, named Polybius, still attributed to this equipoise the stability of Roman government, a fact which had an important influence on later political theory and even to some extent on institutions. But in reality, from this time what was called the Roman Republic was nothing more than the rule of the Senate. But always the theory remained that all powers were ultimately derived from the people. There had always been a provision for the establishment of a temporary dictatorship in times of crisis, and during the last century B.C., when civil war was rife in Italy, this expedient was often resorted to in order to cover with a constitutional cloak the despotic acts of some triumphant military commander, like Marius or Sulla. When at last Julius Cæsar crushed Pompey in 48 B.C., the Senate, recognising its own impotence, made him Dictator for life, and the Imperium, in fact if not in name, was born.

The theory of the Roman Imperial power we may clearly gather from the *Institutes* and *Digest* of the Emperor Justinian (A.D. 528-565), the great codifier of the Roman Law, who, though his actual rule, except for a brief period, was confined to the Roman Empire in the East, centred at Constantinople, still spoke of himself as the ruler of the world. The supreme legislative authority, according to this code, still rests with the Roman people (though they had not exercised it for more than five centuries). The rights of the Emperor are the result of the people's delegation of them, a delegation, it is to be noted, not in perpetuity, but supposedly renewed with each new holder of office. The powers of the people were never formally abolished at any period in the history

of the Empire, but fell gradually into oblivion. It was the peculiar flexibility of the Roman Constitution which made possible this fiction of delegation. The Emperors, from the first (Augustus, 31 B.C.—A.D. 14), were, according to this fiction, simply magistrates who concentrated in their hands the various offices of the old Republic. This is noteworthy, because the Roman magistrates (consuls, prætors, etc.) had a great power, constitutionally held, in the best days of the Republic. Once it was granted, therefore, that all their powers were concentrated in one person and that there was no time limit to his tenure, the office of Emperor appeared as nothing more than a unification of all the old republican magistracies to which, however, had been surrendered the rights of the Roman democracy. The Senate, too, in continuing to meet gave the appearance of a retention of republican forms. But the Senate became totally enfeebled in the later days of the Empire and degenerated into a mere registry office of the Emperor's will.

Thus the Roman Constitution began as a happy blend of monarchical, aristocratic and democratic elements and ended as an irresponsible autocracy. Yet we cannot fail to see that this was an inevitable concomitant of the growth of the Empire, whose vast area, heterogeneous peoples and diverse interests demanded a swift and efficient instrument of action such as can be supplied only by an absolute sovereignty in the hands of one man. As we have suggested earlier, any other method must have disintegrated the Roman World very much sooner than was the case and antedated by many centuries the diversity of states which we know to-day.

The absolute power of the Roman Emperor was not circumscribed even by such considerations as have limited the scope of modern autocrats like the Czars of Russia and the Prussian Kings, for, after all, there was a certain homogeneity among the peoples whom the latter ruled. National feeling was entirely absent in the Roman Empire. The subject-peoples knew nothing of the rights enjoyed by the people of the Roman Republic under a constitution which was always that of a city, and this made the growth of auto-

cracy all the easier. The fiction of the maintenance of the Republic under the Empire had advantages for Augustus and the earlier Emperors, who thereby avoided the fate of Julius Cæsar, but it caused many a disputed succession to the Purple in later years, since the office of Emperor had no constitutional foundations. But what was, at the time of the change from Republicanism to Imperialism, the sovereign power *in fact*—*i.e.* the Emperor—came at last to be regarded as the sovereign power *by right*, and the words of Justinian, namely, that what pleases the Prince has the force of law, were the literal and accepted truth by his day, though the area of the jurisdiction of that law was very much narrower than it had been in the days before the break-up of the Empire in the West in the fifth century A.D.

What, then, were the lasting influences of Roman Constitutionalism? First, the Roman Law has had a great effect upon the legal history of Continental Europe. The systems of custom and law brought in by the Teutonic invaders of the Empire in the West fused with and merged into the Roman system which they found, and this fusion has produced the legal systems which prevail in Western Continental Europe to-day. Secondly, the Roman love of order and unity was so strong that the men of the Middle Ages were obsessed with the notion of the political unity of the world in the face of the most disintegrating forces. And this Roman love of unity is the basis of the persistent dream among moderns of the ultimate establishment of some international or super-national authority for the prevention of war. Thirdly, the double-sided conception of the Emperor's legal sovereignty—on the one hand, that his pleasure had the force of law, and on the other, that his powers were ultimately derived from the people—persisted for many centuries and was responsible for two distinct mediæval views of the relations of government and governed. At the beginning of the Middle Ages it led to the doctrine of the blind acceptance by the people of the "powers that be," and towards their close to the argument that the people, having originally delegated the sovereign power to the Emperor, might rightfully resume it, and this

last was the philosophic basis of the democracy with which the modern world began.

IV.—CONSTITUTIONALISM IN THE MIDDLE AGES

With the inrush of the Barbarians into the western half of the Roman Empire in the fourth and fifth centuries the Roman political machine broke down. It continued, however, in the eastern half, where the Emperors maintained a precarious rule over an ever-diminishing area around Constantinople. This later Roman (or Byzantine) Empire became more and more a closely-knit and isolated state until, out of all touch with Western Europe, it finally fell a prey to the Turks, who captured its capital in 1453. In the West actual unity was impossible after the Barbarians had broken the universality of the Roman Law. But there always remained the legal theory of a world-empire, and it was out of this theory that the Holy Roman Empire developed.

This empire was founded by Charles the Great in the year A.D. 800, but it was a very different organisation from the original Roman Empire. It was the Roman Empire modified territorially, racially, socially, politically, and spiritually to such an extent that the old Roman constitutionalism entirely disappeared. The Teutonic elements were strong enough perceptibly to leaven the Roman lump, and the growth of the Catholic Church, which had begun to come into its own in the later days of the Roman Empire, was given opportunities, amid the break-up of the old Roman centralism, to make such claims to universal power as to threaten the temporal arm. Before Charles the Great's empire had time to develop a proper constitution, it first fell apart among his successors, according to the Frankish laws of inheritance, and then disintegrated in face of the Norse invasions of the ninth and tenth centuries. After this the Holy Roman Empire was never again what it had been under Charlemagne. It came to be confined to Germany with a vague and varying hold on the sovereignty of Italy.

All over Europe then rapidly developed the phenomenon

of feudalism. This was a kind of mediæval constitutionalism, since it was to some extent systematised into a generally accepted form of social and political organisation. Its essential feature was a division of land into small units, the general principle of which was that "every man must have a lord." This added to the shadowy claims of the mediæval Empire without increasing their substance, for it was now possible to conceive of European society, without putting the conception to the test of fact, as a pyramid, at the apex of which stood the Emperor who was, in his turn, regarded as "God's vassal." The evil of feudalism lay in the inordinate power it gave to the great barons, and in proportion to their strength the day was delayed when a unified state could emerge. We therefore find that the strong kings of the Middle Ages were those who endeavoured to concentrate power in their own hands and so to systematise a central control necessarily detrimental to baronial supremacy.

In this way feudalism seems to have been an inevitable growth to bridge the gulf between the chaos of early mediæval times and the order of the modern state. It was on the western edge of Europe that these first great centralising moves were made. In England and France particularly, and to a less extent in Spain, the policy of the kings from the eleventh century onwards was to concentrate power in their hands, and to control and finally destroy the great feudal fiefs. And it is precisely to these countries that we may look for the first faint emergence of those two principles which we have described as the necessary conditions of the growth of modern constitutionalism, namely, nationalism and representative democracy. England was never within the limits of the Holy Roman Empire, nor was France after the break-up of Charlemagne's dominions. As to the Papal authority, both countries developed an independence sufficiently vigorous to establish what was, in effect, a national Church, and only in very abnormal times did the Pope hold any real sway within the confines of these two states. Moreover, it was in these two countries that assemblies containing representatives of estates less than the baronial first appeared. In

England the first Parliament, which included Knights of the Shire and representatives of towns, was summoned in 1265, in France in 1302, the latter as a direct result of a Papal claim to the exemption of clergy from civil taxation. An added sense of nationalism was given to these states as a result of the Hundred Years' War (1337-1453), which emphasised the identity of interests of the subjects of each state respectively. The cry of Joan of Arc might well have been "France for the French," while the English were driven to concentrate upon the work of rectifying the disorders at home which the war had largely engendered.

The sense of nationalism in Spain grew out of a different set of circumstances. Here, in the eighth century, the Mohammedan Moors had conquered the greater part of the country. It fell to the tiny Christian communities left in the north to bind themselves together to expel the infidels. By the fourteenth century there were only two important states in the Peninsula apart from Portugal in the west and the remnant of Moorish territory (Granada) in the south-east corner. These were Aragon and Castile. Each of them had assemblies (or Cortes) containing representatives from rural and urban areas besides the barons and clergy. Towards the end of the fifteenth century the two states were united by marriage and became the Kingdom of Spain.

On the other hand, in Germany and Italy, where the conception of the Holy Roman Empire was much more generally accepted, feudal anarchy continued to a much later date than in the three more westerly states. The anarchical situation, moreover, was complicated by the perpetual conflicts between the Imperial and Papal authorities which grew in intensity from the middle of the eleventh century. After passing through the miseries of the Investiture Contest (1056-1125) and the degradation of the subsequent schisms caused by the rival claims of Cæsars and anti-Cæsars, Popes and anti-Popes, the two great mediæval institutions were so weakened by the end of the thirteenth century that they were never able to regain their former power. The only matter of constitutional interest which emerges from this long period of internecine

strife was the experiment generally known as the Conciliar Movement. This followed the scandal of the Great Schism (1378-1417) which divided Western Europe into two religious allegiances under different Popes. Failing the advent of a second Charlemagne, who might forcibly have ended this unseemly strife, an escape from anarchy was attempted in the revival of an earlier institution for the government of the Church, namely, the General Council to which the Pope was to be forced to submit. The Council of Pisa (1409) was followed by the Council of Constance (1414-1418), to which were sent representatives of the Church, both clerical and lay, and which laid down the principle of permanent Conciliar control of the Pope. The constitution which it, in effect, drew up failed to work, however, in the next Council, the Council of Basel (1431-1449), and from that time the Conciliar system, as a method of Church government, disappeared.

But though the Conciliar Movement itself was a failure, it has considerable significance in the history of constitutionalism in two ways. First, the organisation and procedure of the Councils acknowledged the national divisions into which Europe was now falling. At Constance, in fact, where the method of voting by nations was adopted, five such groups—viz. the Italian, French, German, English, and Spanish—were recognised. So that while the spirit of mediæval unity was still sufficiently alive to convene such an œcumenical body as this, in doing so it emphasised the force that was destroying it. Secondly, the Conciliar Movement gave rise to much speculation as to the methods by which a General Council might be made to represent the views of the whole body of the Faithful, as distinct from those merely of Church Dignitaries. The efforts to discover the means of thus establishing an effective organ of Church government produced in the fifteenth century a large volume of political philosophy—in the writings of such men as Marsiglio of Padua, William of Ockham, John Gerson and Nicholas of Cues—which explored, in a pioneer fashion, a vast field of political problems, such as sovereignty, nationalism, representation and the limitation of

monarchy, and thus foreshadowed the constitutional developments of the modern epoch.

Towards the end of the Middle Ages, then, in the whole of Western Europe, we find a fever of political speculation which arises out of the abuses of the Catholic Church and whose object is to give that Church a new constitution. But whereas, in this case, it never gets beyond the vague realm of theory and unsuccessful experiment; in the internal politics of the three more westerly countries, England, France and Spain, we find at this time the actual germs of the modern constitutional state. For in these states practical politics outstrode legal theories, and the ghost of the Holy Roman Empire was irrevocably laid. In Germany and Italy it continued to stalk for many years.

V.—THE RENAISSANCE STATE

The process of the break-up of mediæval institutions which we have been tracing was given a tremendous impetus by the great revival of antique culture of the fifteenth century, which, with all its consequences, is generally called the Renaissance; for such political facts and ideas as the scholars of that epoch found in the work of the Greek writers fitted ill with the mediæval conceptions which were already becoming discredited by the facts. The general effect was at once one of atomisation and one of integration: it atomised the mediæval world but integrated individual states. In England, France and Spain it effected a more closely integrated state on national lines; in Germany and Italy the process of integration went on, but over much more confined areas, so that in those countries many little states arose. But in many respects the Renaissance undid the good work that had been going on in the three Western states.

The Renaissance state was not a truly constitutional, much less a democratic, state. Its essential quality, as we have noted earlier, was external sovereignty which implied a strong central authority maintaining itself at any cost, chiefly with a view to strengthening the state against all its neighbours.

The men of the Renaissance, indeed, caught but little of the spirit of antique political philosophy, for, whereas Greek autonomy, as we have said, was conceived as the only means of assuring the good life to the individual, Renaissance sovereignty was not concerned with the rights of the individual at all. In short, the Renaissance sovereigns were concerned with politics and not in the least with ethics, that couple so closely wedded in the philosophy of the Ancient World. The truth of this is evident in the work of the only political theorist of any account which that age produced, namely, Machiavelli, himself a very child of the Renaissance. It was because Machiavelli's country, Italy, was not transformed at this time into a Renaissance sovereign state that he was concerned to appeal to somebody to do for her what had been done for the more westerly states. This is the burden of his book, *The Prince*, published in 1513, in which Machiavelli seeks a saviour of his country in this sense. The significance of this book is that it marks the epoch very clearly by recording on paper and turning into a new philosophy the doctrine of "unmorality" as applied to the state—the doctrine, that is to say, which asserts that politics should not be circumscribed by any ethical considerations, for to bother about such matters was to weaken the sovereignty of the state in a world where sovereignty counted for everything. The saviour of Italy was not found by Machiavelli, but it is worthy of notice that when that saviour, Cavour, at last emerged in the middle of the nineteenth century, he said of his own conduct in the crisis of the Italian unifying movement, "If we did for ourselves what we are doing for our country we should be great rascals."

The political effect of the religious Reformation of the sixteenth century was to give to the Renaissance state a divine sanction. The theological attitude of Luther, as first manifested in 1517, logically implied complete toleration of religious opinions. This was not feasible in a Catholic world in arms, against which Luther, in order to protect his position, sought the championship of a political prince. It was thus that the Elector of Saxony established a State Church. Such a Church was bound to become as exclusive and intolerant as the one

it had superseded. Thus the political consequence of Luther's doctrinal onslaught upon the Papacy was to atomise the world still further, and to add to the prerogatives of the Renaissance sovereign the control of the religious practices of his subjects. The movement is most clearly seen in England, where the ecclesiastical supremacy of Henry VIII and Elizabeth was succeeded by the Erastianism of James I.

So Renaissance sovereignty flourished, and very effectively delayed the harvest of that constitutional seed which had been sown with such promise in Western Europe towards the end of the Middle Ages. It developed on the Continent into the type of monarchy known as *Enlightened Despotism*, which may be said to have lasted from 1660 to 1789. In France, in Prussia, in Austria the despotism became complete. In France the States-General, from the time of the Renaissance, met less and less frequently, and after 1614 they were not convened at all until the eve of the Revolution in 1789. The two great characteristics of this type of despotism were a professional army and a professional bureaucracy drawn generally from the middle class or bourgeoisie. Thus, as feudalism decayed, the only unifying force was the Crown which sought no aid from any representative body, and so the organs of a properly constituted body politic, instead of thriving by activity, atrophied through lack of use. That is the reason why, on the Continent, the full development of constitutionalism was delayed until the nineteenth century, and why, when it came at last, it took a series of revolutions to achieve it. In England alone Renaissance monarchy was not allowed to become an unchecked despotism, and it is therefore to the history of our own country that we must turn to trace the uninterrupted development of constitutionalism.

VI.—CONSTITUTIONALISM IN ENGLAND

England, too, had its period of despotism in the Renaissance age, but peculiar circumstances prevented its becoming strengthened and fixed, as was the case on the Continent. England could hardly escape the temporary establishment

of the type of state which we have called the Renaissance State, for, besides suffering from the general phenomenon of the break-up of mediævalism, she had her own peculiar difficulties. The long war with France had exhausted her resources, and the civil war (the Wars of the Roses) which followed completed the process of disintegration. We have said that the first parliament including representatives of the counties and towns met in 1265. From 1295, the year of Edward I's "Model Parliament," parliaments met at irregular intervals, chiefly for the purpose of granting money to the king. But at the end of the fourteenth century it was given a new reason for existence, for in 1399, Richard II was deposed and a younger branch of the family of Edward III, the Lancastrians, usurped the throne. Having no true blood claim, Henry IV and his successors depended on Parliament for their justification. The weakness of their position, however, grew with the failure against France and the incompetence of Henry VI, whose deposition was brought about by the Wars of the Roses. Edward IV, who now became king, had to continue the war, which was brought to a close by the defeat of his brother, Richard III, at the battle of Bosworth, by Henry Tudor in 1485. This was the occasion for the setting-up of the monarchy which is frequently referred to as the Tudor Despotism.

That, however, is a term which requires a good deal of qualification. The Tudor Despotism had three organs of government, only one of which can be compared to the highly-trained bureaucracy which, as we have observed, became a marked feature of despotic government on the Continent. This was the Council, which was the monarch's tool in the executive department. Its inordinate power was checked by the existence of the other two, namely, Parliament and the Justices of the Peace. It is true that Parliament sanctioned, generally without demur, the monarch's plans as drawn up with the aid of the Council, but the important point is that it continued to meet and to approve all legislative and taxative proposals. Undoubtedly, the Tudor parliaments were mostly subservient, but this was because, at any rate, three of the five

Tudor monarchs voiced the will of the nation. When the monarch no longer embodied that will, Parliament, with all its machinery ready, revolted. The Justices of the Peace, who were the local administrators of the policy of the central government, were not, like the local administrators on the Continent, paid professional agents of the central authority, but unpaid workers drawn from the landed gentry.

The insularity of the country, which freed it from the constant need of armed defence against foreign aggression, and cut it off from those forces which year by year strengthened the Continental autocracy, made it possible to blend the despotism of the monarch with the deeply-rooted principle of local and central self-government. The isolation of the state also strengthened its sense of nationalism, and this was enhanced by two great series of events in the Tudor period. The first was the Reformation, which transferred the headship of the Church from the Pope to the English monarch, and thus preserved it completely from Papal interference. The second was the advent and defeat of the Spanish Armada, which exorcised for ever the dread of that power which had filled the minds of Englishmen since its emergence as an imperial force at the opening of the sixteenth century. This second event at once freed Parliament from the thralldom which had kept its mouth tightly shut on matters of high policy, and when, in 1603, the Stuarts ascended the throne in the person of James I, there began the long struggle which was not to end until Parliament had triumphed completely over the Crown.

A mere wrangle under James I, it became an armed conflict under his son. The Civil War (1642-9) really destroyed whatever chance there was of establishing in England the type of enlightened despotism which was developing apace on the Continent, and though, after the period of the Commonwealth and with the Restoration, the Stuart autocracy attempted, under Charles II and James II, to raise its head once more, it was so utterly overthrown by the Revolution of 1688-9 that George III was driven insane by his fruitless attempts to revive it. We shall examine the details of this change in a later section. Here it is only necessary to emphasise two

great facts connected with this Revolution of 1688. The first is the passage of the control of affairs from King to Parliament. The second is that this change was placed upon a statutory basis. Before this time there was, to all intents and purposes, no statutory law of the Constitution, only customs and conventions; for Magna Carta was hardly a statute, and, in any case, most of its provisions became obsolete with the passing of the feudal age which produced it, though the Commons were glad enough to quote it as a precedent. The Petition of Right of 1628, indeed, became a statute when the king agreed to it, but its provisions were not kept, and the whole question of the limitation of the Crown passed into the melting-pot of the Puritan Revolution. Under the Commonwealth and Protectorate fully written constitutions were produced, but they passed away with the Restoration. Certain financial provisions connected with the Restoration had statutory force, but in any case they were included in the general Revolutionary settlement.

The various statutes passed at the time of the Revolution of 1688-9 placed the sovereignty of the English state irrevocably in the hands of Parliament, for the Bill of Rights and the Mutiny Act gave Parliament the control of the Army, and by the simple device of annual supplies of money for its upkeep produced an effective preventive of tyranny. Yet this was only a general legislative supervision. The executive function Parliament was content to leave in the hands of the king and his ministers. Yet in the course of the eighteenth century, by a purely conventional growth, the cabinet system, founded upon party, grew up, and by the end of the century had become so firmly based that there was added to the powers of Parliament the control of the executive also.

Meanwhile, the legal history of the state had fixed the principle known as the "Rule of Law," which means the equality of all citizens of whatever rank before the law. Statutes like Habeas Corpus (1679) had secured, on the one hand, the immunity of the citizen from false imprisonment, and, on the other, the immunity of the judge from royal interference. Again, judicial decisions like that in connection

with John Wilkes (1763) achieved simultaneously the security of the citizen from wrongful arrest and the subjection even of Ministers of the Crown to the ordinary processes of law. This Rule of Law was transferred to all the British Colonies and is hence the basis of the legal system to-day in all the Self-Governing Dominions of the British Crown and of the United States of America.

Thus, by the second half of the eighteenth century Britain was a constitutional, though not a democratic, state. By conventional growth and by a series of statutes her three organs of government, legislative, executive and judicial, were properly constituted and related in such a manner as to ensure the absence of tyranny. The principle of representation was deeply rooted in this system, but no ideas of franchise extension had yet come to be accepted as practical politics. For this the country had to wait for the combined effects of the French and Industrial Revolutions of which we shall speak later. Nevertheless, in the middle of the eighteenth century, Britain was the only constitutional state in the world. This is our justification for tracing it in this historical sketch at such length, for, as one authority says, "before the outbreak of the American and French Revolutions, the history of the British system (at home or in the daughter-lands) is in effect the history of self-government in the world." It was inevitable, therefore, that this system should become the model for the later constitutional development of other states.

The British constitution was the result of a slow growth, an almost purely evolutionary process, not, like the others which we shall examine, the product of deliberate invention, resulting from a theory. Yet, though its development was not the result of a theory or theories, it was, nevertheless, made the starting-point of the political speculation which characterised the seventeenth and eighteenth centuries. If Britain was the only constitutional state in existence, and if men were seeking the means of circumventing the despotism under which the Continent lived, it was natural that they should attempt to examine and analyse this unique instrument of their age. But that instrument had grown up by an evolu-

tionary process, and the question was how it could be applied to the revolutionary circumstances which seemed to be the only ones in which a change could now be brought about. The answer gives the key to understanding the essential difference between the British Constitution and those which could not but imitate it. The new constitutionalism whose emergence we must now examine was in the form of a document which attempted to sum up at a stroke the fruits of the experience of the state which had evolved its constitutionalism by a slow empirical process. In this sense the various types of western constitutionalism met and merged, the older acting upon and being acted upon by the newer. But precisely because the British Constitution had developed so far, it was able to adapt itself to the new conditions and graft new elements produced by the later documentary constitutions on to the existing constitution, without fundamentally changing it.

VII.—THE CONSTITUTIONAL INFLUENCE OF THE AMERICAN WAR OF INDEPENDENCE AND THE FRENCH REVOLUTION

The political tyranny which the Renaissance had produced and the persistence of religious intolerance which the Reformation had done nothing to allay, gave rise to an explanation of the origin of the state which was to hold the field until the dawn of the nineteenth century. This was what is generally known as the Social Contract theory. In the modern world it was first upheld by the Huguenots in France and the Netherlanders under the Spanish yoke, who were the worst sufferers from the effects of these two phenomena. But it was by no means new. We find a champion of it in Plato's *Republic*, and it crops up again during the Middle Ages in the crisis of the struggle between the Emperors and Popes. Briefly stated, the Contract theory argues that the State is born in a compact among a number of men who come together to end an intolerable state of nature. By the compact men abandon certain of their natural rights, but only those necessary to the establishment of a civil condition of society. The object

of political society is, therefore, to secure that the rights not so abandoned continue to be guaranteed to the citizens. If the establishment of government is contractual, it follows that when government becomes tyrannical it breaks the contract, and therefore the members of the state have the right to remove such a government. No doctrine could better suit those who, like the French Huguenots and the Spanish Netherlanders, wanted to justify the destruction of despotism, and could thereby revolt with ultimate right on their side.

This theory went through many variations in the hands of several advocates. It is true that one of its earliest and most famous exponents, an Englishman, Thomas Hobbes, in his *Leviathan* (1651) used the argument to justify state absolutism, on the ground that the government thus set up was no party to the contract, and therefore could not break it. But, whereas most of its upholders were seeking to justify tyrannicide, Hobbes, writing immediately after the disorders of the English Civil War (1642-9), was looking for a philosophical escape from anarchy. Another Englishman, John Locke, who had an amazing influence on Continental thought in the eighteenth century, employed the theory in his *Treatises of Civil Government* (1690) as a justification of the English Revolution of 1688-9. This book was a Whig manifesto, championing the cause of that party which had dethroned James II and carried the Bill of Rights. The compact, according to Locke, was made between the subjects and the monarch to establish a common organ for the interpretation and execution of man's rights, as existing before the political condition was established. This general doctrine was easily applied by Locke to the special circumstances of 1688, and in fact had already been incorporated, in so many words, in the resolution of the Convention of 1689, which dethroned James II. This resolution asserted that that king "having endeavoured to subvert the constitution of the kingdom by breaking the original contract between king and people . . . has abdicated the government and the throne is thereby vacant." Thus, when James II, after three years of misgovernment, was dethroned, presumably a new contract was

made to establish William of Orange and Mary on the English throne. Such was the Whig answer to the Stuart doctrine of the Divine Right of Kings.

But whereas Hobbes had reconciled liberty and authority by the convenient but illogical method of entirely destroying one of the parties to the reconciliation—that is, by sacrificing everything to vindicate the principle of absolutism—Locke had evaded the thorny problem of sovereignty by ignoring it. If revolution was justified, who or what was the authority which should decide that the time was ripe for its execution? Locke never answered this vital question, but contented himself with vaguely envisaging the “people” in the background as a superior embodiment of power. Yet it would be idle to pretend that the “people,” as such, effected the Revolution which deposed James II and placed William and Mary on the throne of England in his stead. This, in fact, was the work of an oligarchy of Whig leaders whose opposition to James II issued in the Bill of Rights, a statute passed by an utterly unrepresentative Parliament whose basic constitution had not been materially reformed since its foundation in 1295. It was left to a Frenchman, Jean Jacques Rousseau, to attempt the difficult problem of reconciling sovereignty and democracy. In his *Social Contract* (1762), Rousseau made a brave attempt to build up a logical, and even incontrovertible, defence of democracy, developing Locke’s theory by Hobbes’ method. If man was born for freedom and yet was everywhere in chains, said Rousseau, the only means of rendering the slavery legitimate lay in the retention of the sovereign power in the hands of the people who had made the contract which turned a multitude of individuals into a society. The contract secured equality, since thereby each, in giving himself up to all, gave himself up to no one. This doctrine of popular sovereignty, as enunciated by Rousseau, was the trumpet blast to the gathering forces which were destined to overthrow the old régime in Europe, for if Rousseau’s teaching came to be generally accepted, Enlightened Despotism would be unable at last to prevail against it.

Rousseau’s *Social Contract* was probably the most epoch-

marking book ever written, not so much in itself as in its influence upon the constitution-making which followed it. In his frantic efforts to find a philosophical justification for democracy, based upon his doctrine of the General Will, Rousseau landed himself into a logical morass, and the doctrine of the Social Contract as an acceptable theory of the state finally vanished in the transcendental mists generated by the idealistic philosophy of Rousseau's German successors, Kant, Fichte, and Hegel. Rousseau himself derided the notion of representative democracy as a contradiction in terms, and his ideals of government, being founded on the classical notion of direct or primary democracy, were quite impracticable at the time in which he lived. But his disciples were not so uncompromising, and it may with truth be said that representative institutions, as developed since his time, have attempted, consciously or unconsciously, to give Rousseau's ultimate theory practical effect.

Rousseau's *Social Contract* was, in fact, only the literary forerunner of two great revolutions which occurred at the end of the eighteenth century, one in America, the other in France. The American War of Independence (1775-1783) resulted from an economic régime which the American colonists regarded as tyrannical. Their slogan, "No taxation without representation," implied an ultimate revolt from the Mother Country, because, while some form of taxation had been rendered absolutely necessary to help to defray the cost of the Seven Years' War (1756-1763), fought largely in defence of the Colonies against the French, the representation of the American Colonies in Parliament at Westminster at that time was a manifest impossibility. So the American War of Independence broke out and ended in the establishment of a new political entity known as the United States of America, founded upon a constitution promulgated in 1787, which came into operation in 1789.

This Constitution opens with the Declaration of Independence (first issued separately in 1776) which states categorically : that all men are created equal ; that they are endowed by their Creator with certain unalienable rights . . . that to secure these

rights, governments are instituted among men, deriving their just powers from the consent of the governed ; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundations on such principles, and organising its powers in such form, as to them shall seem most likely to effect their safety and happiness.

This is the true beginning of modern documentary constitutionalism. If the Social Contract theory, as an explanation of the origin of the state, has been found, under the searching lights of the Historical Method, to be baseless, no amount of research or argumentation can destroy the fact that the Americans did form a new body politic in 1789 and that they enshrined its rights in a document which, as the Constitution of the United States, remains the supreme authority in that country to this day. Moreover, the Americans, in working out a form of political organisation which should satisfy the various groups forming the new state, revived an older political method, namely, federalism, which was destined to have a tremendous influence on politics in later days. Of this we shall have much to say in a later chapter.

It would not, perhaps, be possible to assert that Rousseau's influence was directly felt by the Americans. It would be nearer the truth, probably, to say that the Fathers of the American Constitution were coevally informed by the same spirit as that which inspired Rousseau's political philosophy. But Rousseau was directly behind those who led the early movements of the French Revolution. Of this great series of events we need not here say much. But it is necessary to emphasise the fact that when the bankrupt government of France in 1789 resorted to the expedient of recalling into existence the States-General which, as we have said earlier, had not met since 1614, it carried into the forum all those floating idealistic dogmas of Rousseau and his followers and thus brought them into practical conjunction with the promulgation of a political constitution. The National Assembly of 1789, snatching the opportunity, drew up the " Declaration of the Rights of Man and of Citizen " before coming to its proper business of making a constitution. This document

was saturated with the dogmas of the contractual origin of state, of popular sovereignty and of individual rights, as shown by the following excerpts :

1. Men are born free and equal in rights. . . .
2. The aim of every political association is the preservation of the practical and imprescriptible rights of man. These rights are liberty, property, security and resistance to oppression. . . .
4. Liberty consists in the power to do anything that does not injure others ; accordingly, the exercise of the natural rights of each man has for its only limits those that secure to the other members of society the enjoyment of these same rights. These limits can be determined by law. . . .
6. Law is the expression of the general will. . . .

The Constitution, which followed in 1791, and to which this Declaration was prefixed, did not last, because the Legislative Assembly to which it gave birth was unable to deal with the state of anarchy within France and the state of war without. Nevertheless, this is the second great stage in the development of modern documentary constitutionalism, as the American Revolution is the first. Though the constitutionalism of the early years of the French Revolution had to give way, first to the anarchy of the Reign of Terror and then to the despotism of the Napoleonic régime which was built upon its ashes, the Revolution had lighted a fire of political liberty which was never again to be permanently smothered. For, as one authority says, the French " ideal of self-government became—what it had never been in its British or even its American form—a challenge to every constituted government which did not recognise and embody the sovereignty of the people."

VIII.—NATIONALISM AND LIBERAL REFORM

Paradoxically, the Napoleonic régime and its consequences in Europe did the rest, for now that the principle of democracy had been fairly launched on the Continent (and Napoleon himself, in spite of his militarism, was a disseminator of the revolutionary seed), all that was required to give effect to the spread of constitutionalism was a sufficiently vital sense of

nationality among the various oppressed communities to which it was addressed. Napoleon's bizarre boundary-making, especially in Italy and Germany, outraged a nascent spirit not recognised as existing until it was thereby goaded into action, and Napoleon, aiming at the United States of Europe, merely succeeded in disuniting them to the point of his own destruction. The nationalism of which we spoke in connection with the Renaissance, was a vague, and largely unconscious, development: the nationalism which followed the failure of the Napoleonic conquest of Europe was a mighty fire which first consumed the incendiary and then smouldered, to burst into flame again, from time to time, until it had burnt every remnant of the edifice of the old régime. Not for nothing was the Battle of Leipzig called the "Battle of the Nations," though the royal and aristocratic diplomatists, who made the Treaties of 1814-15, failed to grasp the true purport of the movement which had engulfed the pretensions of Bonaparte.

Those Treaties restored, in most countries, the ancient despotisms which the Revolution had sought to overthrow, and revived, moreover, most of the pre-war frontiers. Where this was not done, they cut away odd areas and populations from their old allegiances and placed them under new ones without reference to the ideas disseminated by the Revolution, but according to the dictates of power, policy or the rights of the victor. The result was that the universal emergence of the national constitutional state was postponed, though it was no longer possible to abandon it altogether. Another result was that the zeal of the reformers was driven underground and burst out in occasional revolts. The evil of this was that it confused the issues of nationalism and liberal reform which should have been one. The diplomats who were supposed to have charge of the peace of Europe were concerned rather to crush this revolutionary spirit, wherever it appeared, but their hold weakened with time, and in the year 1830 there was a serious revolution in most Continental states. As usual, it began in France, where the restored Bourbon dynasty was overthrown and a still more limited

monarchy was introduced under Louis Philippe. But this was the only movement which was attended by success at the time, with the exception of that in Belgium which led to the establishment of a new independent state under a constitutional monarchy. Another series of revolutions in 1848, much more serious than in 1830, showed once more the weakness of a mere liberalising movement not founded upon national unity. Of the constitutions promulgated at that time, only those of France, Sardinia, the Netherlands and Switzerland survived the reaction. Of these, the first was soon lost in the establishment of the Second Empire under Louis Napoleon in 1852, while the second persisted but feebly until it came to be associated with the unifying movement in Italy.

After the failures of 1848, therefore, a new turn was given to the aspirations of the Liberal reformers. Besides the obvious fact that the revolutionary method had failed, a new and very important factor was working towards the peaceful settlement of the political problem. This was the effect of that vast series of changes which we call the Industrial Revolution. Beginning in England in the second half of the eighteenth century, as a succession of mechanical inventions which resulted in the application of power to the processes of industrial production, it progressed to the foundation of the factory system and modern capitalism, and ended in a complete recasting of social forces and a fundamental variation in the political equilibrium. When this economic revolution began to work itself out in England, it was inevitable that it should have a serious effect upon the political situation. It destroyed for ever the preponderant weight of the agricultural classes in the community and brought into being a new middle class, the capitalists, who year by year became more insistent in their demand for political recognition.

Emancipation was granted to this class in England by the Reform Act of 1832. This Act swept away the abuses which had accumulated through many centuries, redistributed parliamentary seats so as to destroy the representation of areas which had outlived their former political significance, and gave parlia-

mentary representation to the new urban areas which had developed through the industrial changes. In doing this it enfranchised the new capitalists, and though by no means introducing a complete system of democracy, it was the first step towards it, and in the right line of constitutional, as opposed to revolutionary, progress, since it was found possible to effect this reform without revolutionising the existing methods of government. The enfranchisement of the middle class, indeed, strengthened the cabinet system—*i.e.* the control of the executive by Parliament—already firmly founded during the eighteenth century, by changing the centre of political gravity from the Lords to the Commons and by bringing into existence a new division of parties on which the maintenance of a real cabinet system depends.

This great movement, arising from the Industrial Revolution, inevitably spread to the Continent, and, as it did so, it brought in its train consequences which strengthened the tendency to changes on constitutional lines, for it effected an alliance between existing governments and the new capitalists who wanted, above all things, peace and order. Moreover, it gradually tended to intensify the existing sense of nationalism by prompting a policy of economic protection, since the only way that a country not yet industrialised could hope to compete with those whose industrial changes allowed them to sell so much more cheaply was to raise a tariff wall against the latter's goods, and thus nurse those industries of which their resources made them potentially the producers.

But these industrial changes also brought into existence vast urban agglomerations of wage-earners who, in their turn, demanded political rights. In England this led first to a working-class movement known as Chartism (1837-48), whose purpose was to bring pressure to bear upon the government to grant, among other things, franchise reform, and, when this had worked itself out without success, to the two Reform Acts of 1867 and 1884-5, the general effect of which was to enfranchise lodgers in the towns and agricultural labourers. But in most countries, before the political machine could be so adjusted as to grant such rights, revolutionary theories were

already being propounded whose object was to overthrow existing governments and establish a new form of society. The chief of these theories was that form of socialism associated with the name of Karl Marx, whose teaching in his *Communist Manifesto* (1848) and later writings, struck not only at the constitutional development of parliamentary institutions, but also at the whole conception of nationality. The question now was, could national constitutionalism find its feet sufficiently to maintain successful battle against this revolutionary doctrine? The history of the second half of the nineteenth century partially answered this question.

IX.—NATIONAL CONSTITUTIONALISM IN THE SECOND HALF
OF THE NINETEENTH CENTURY

The second half of the nineteenth century was the heyday of documentary constitutions. With the exception of those of Great Britain and the United States, no existing constitution is older than the nineteenth century, and most of those which existed in the first half of that century have since either entirely disappeared to be replaced by new ones or been so fundamentally amended and revised as to be in effect new ones.

This great movement of constitutionalism was inaugurated by the unifying movements in Italy and Germany which were, in their turn, largely responsible for the establishment of the constitution under which France is governed to-day. In Italy, the Sardinian Constitution, as we have said, was the only one that survived the catastrophe of 1848. Italy was still divided into seven states, but not for long was it to be so. Between the years 1859 and 1870 by a series of revolts and wars the various states were amalgamated with Sardinia, and as each came into the union the constitution of Sardinia was made to apply to it, thus finally forming the kingdom of Italy. In Germany, again, after the failure of 1848, the pre-existing system was revived, but by means of three wars fought between 1864 and 1871, engineered and executed by the genius of Bismarck, Denmark was defeated and lost the

Duchies of Schleswig and Holstein, Austria was expelled from the German Confederation, and the Second Empire was overthrown in France. In this way four new constitutional states emerged. In Denmark, in 1864, the Crown was forced to accept a parliamentary system; in Austria and Hungary new constitutions were drawn up in 1869, under a union of the Crowns; in Germany the German Empire was established in 1871; and in France the Third Republic was founded in 1875.

Each of these constitutions adopted parliamentary institutions which were copies, more or less revised, of the English model. Each of them contained democratic elements, but the powers of Parliament were not yet such as to satisfy all the demands of liberal reform. Moreover, nationalism had triumphed only up to a point. Italy had, outside her national boundaries, a body of Italians in 'Trieste and the 'Trentino still under Austrian sovereignty; Austria-Hungary, with her many dependents, could by no means be described as a national state. Germany, though much more solidly national than Austria-Hungary, still had a large number of Poles within her borders, and had snatched from France, as part of the price of her victory in 1871, the provinces of Alsace and Lorraine.

In the years that followed these events nationalism became the battle-cry of the Balkan peoples still oppressed under the heel of Turkey. In 1878, as the result of a war between Russia and Turkey and the interest taken by the Powers in the problem at the Congress of Berlin, three new states were established, namely, Servia, Montenegro and Rumania. Greece had already secured her independence in 1832 and was governed under a constitution finally promulgated in 1864. There remained Bulgaria, only partially freed under the arrangement of the Treaty of Berlin, and Turkey herself. Abdul Hamid II had proclaimed a constitution for the whole Ottoman Empire as early as 1876, but it had been abrogated within two years. In 1908 the Young Turk party successfully revived this Constitution, deposed Abdul Hamid and made Turkey a constitutional monarchy. Taking advantage

of these Turkish disturbances, Bulgaria declared her complete national independence in the same year.

Thus, under the influence of Western Liberalism, the south-east corner of Europe, so long oppressed by the Oriental despotism of the Turks, had by the first decade of the twentieth century become constitutionalised. In each case a new state was established on the basis of nationalism, a principle deliberately adopted as a means of emancipation. In no case, indeed, were national aspirations fully satisfied, and this fact led to the Balkan Wars of 1912 and 1913. Nevertheless, the whole history of the Balkan Peninsula in the second half of the nineteenth and the opening years of the twentieth century, shows how widespread was the belief in national democracy as the most satisfactory ground on which to build the progressive constitutional state.

X.—CONSTITUTIONALISM AND THE GREAT WAR

By the eve of the Great War, in 1914, then, national constitutionalism was very widespread, though it had by no means completed its work. There was, indeed, in Europe in 1914 only one state without a constitution, namely, Russia. Here the attempts at constitutionalisation had gone no farther than the establishment of a partially elected assembly (the Duma) which, from its inception in 1905, became weaker rather than stronger. The failure of the Duma experiment and the continued inability of the Czarist government to meet constitutional demands, was to be largely the ground of the success of the Bolshevik Revolution, founded on that Marxian doctrine of the class-war which threatens constitutional progress. In this case, anti-constitutionalism was to score a signal victory.

Nor was constitutionalism confined to Europe, the United States and the British Self-Governing Dominions. It had spread to many outlying parts of the earth, places as far afield as South America, Japan, and even China. The Europeanisation of the world, through the force of modern imperialism and the economic consequences of the Industrial

Revolution, has had its counterpart in the dissemination of the Old World's political creeds and in the wider application of its political practices. And this constitutionalism was always moulded either on the British model or on the modified form of it adopted by the United States. That is to say, it established representative institutions and made the nation the basis of the state. Where a nation could not be said to exist, as in China, the constitutional trend nurtured the growth of nationalism and used it as a political platform.

Yet, far as it had gone in Europe, political constitutionalism had in most cases still farther to go in the matter of representative democracy and nationalism. France still had her lost provinces to recover; Italy her "*Italia Irredenta*"; Germany held some non-German elements, Danes in the north and Poles in the east; Austria-Hungary was aptly described as the "*Ramshackle Empire*," containing as it did Germans, Magyars, South Slavs, Bohemians, Poles and Rumanians; Russia, on her western border, was an agglomeration of Finns, Esthonians, Letts, Lithuanians, Poles and Rumanians; the part of Turkey still in Europe was regarded by the Balkan peoples as an outrage upon their nationality. If history proved, as it seemed, that nationalism was the only firm foundation for constitutional rights, the sole question was whether the so far unfulfilled dreams of national unity could be realised by peaceful means or whether it would require a catastrophe to bring the realisation about. At all events, whether the catastrophe was necessary or not, it indubitably occurred. Furthermore, there were some states in which, though they possessed a constitution, the political organisation was quite inadequate, especially in the direction of the popular control of the executive, and this was particularly the case in Germany.

It is not surprising, therefore, that the War (1914-1918) has had, as one of the most marked features of its aftermath, a rich harvest of constitutionalism. The victors asserted that a lasting peace could be founded only on the basis of the self-determination of peoples, which meant that the suppressed nationalities, so far as this was practicable, should establish

themselves as independent bodies politic on a national basis. The application of this principle involved the partial or complete break-up of four great Empires—Germany, Austria, Russia, and Turkey—which the War itself had already largely achieved. Under the new arrangements Central and East-Central Europe became a mass of small states where hitherto it had comprehended only three. The peace treaties created new sovereign states like Finland, Esthonia, Latvia, Lithuania, Poland, and Czecho-Slovakia; dismembered others like Germany and Austria; and enlarged yet others like Serbia (now Jugo-Slavia or the Kingdom of the Serbs, Croats, and Slovenes) and Rumania.

A new documentary constitution in each case resulted from these changes, for in the new states no method of sovereign government existed and in the old a revolution had taken place involving the overthrow of the old régime. Personal liberty, popular sovereignty, and nationality were the characteristics of the constitutions of all these states, and they all, without exception, adopted the British plan of parliamentary control of the executive, with variations, though many of them went farther in the matter of universal suffrage. So far as charters could achieve it, democracy had certainly triumphed. With a due regard to the exigencies of strategy and economic stability, nationality may be said to have triumphed also. True, there were non-national minorities as before, notably Austrian Germans in Italy and Magyars in the enlarged Rumania, but not at all to the same extent.

In Russia alone the political constitutionalism of the West failed to establish itself. Here a constitutional régime, which had overthrown the Czarist autocracy, was itself crushed by the Bolshevik Revolution. And as the Bolsheviks, being disciples of Karl Marx, do not admit the validity of either representative democracy or the principle of nationality, the constitution of the Socialist Soviet Republic (if constitution it can be called) cannot come within the scope of our inquiries.

A yet further development of constitutionalism resulted from the War in the establishment of the League of Nations. The signing of the Covenant of the League (whose provisions

we shall have to examine later) was made inseparable from a signature to the Treaties. Here for the first time in history we have an organisation of many states under a definitely constituted body of rules and set of organs. The League is at once empirical and experimental, founded, as far as it may be, upon the constitutional practice of the states forming it, and permitting by its form expansion and amendment as experience demands and circumstances allow. We call it a constitutional experiment, not because it is an independent body with sovereign powers (for this it is not), but because it attempts to find the means of peaceful settlement of conflicts between the sovereign bodies which are its members, and is, therefore, in line with that constitutional progress whose history it has been our purpose to trace in this chapter, as opposed to the uncontrolled sword of the despot or the inter-state anarchy of the revolutionary.

XI.—SUMMARY

What, then, emerges from this historical sketch? First, that constitutional politics cannot possibly be understood without reference to their history. Every epoch that we have touched has supplied its quota to the existing whole. Greek constitutionalism gave political philosophy (without which modern constitutionalism could not have been) its inspiration and, during the Revival of Learning in the fifteenth century, opened men's minds to the finer purposes of political organisation. Roman constitutionalism gave the Western World the reality of Law and the ideal of Unity. Feudalism bridged the gulf between the chaos following the fall of the Roman Empire in the West and the emergence of the modern state. The progress of centralisation through the Crown in England, France, and Spain during the Middle Ages was necessary to destroy the evils of feudalism and to lay the foundations of the national state, while the growth of partially representative institutions in those states marked in Western Europe the first faint beginnings of the democratic state. At the same time the Conciliar Movement of the fifteenth century em-

phased the nascent national divisions of Europe and set on foot a wide discussion of representative methods of government. The Renaissance carried forward the centralising process in the west of Europe and planted yet more securely the seed of nationalism there. The Reformation produced the ideal of religious toleration and at the same time enhanced the powers of the Prince through the development of a State Church, thus turning a religious discontent into a political revolt by causing men to believe that the way to religious liberty lay through political organisation. English constitutionalism supplied a continuity of life to liberal institutions through many centuries when elsewhere they were dead or had never lived, permitted the growth of its own institutions among those communities in all parts of the world of which England herself was the mother, and supplied the pattern of a constitution when the moment came for newly-liberated communities to found one. The iconoclastic theories of the eighteenth century laid the foundations of the modern doctrine of democracy. The American War of Independence and the French Revolution gave the modern world the first examples of documentary constitutions, thus finding an immediate way of reconciling liberty and authority, the rights of man and established government. America, moreover, through the expedient of federalism, gave the world a lesson in political union which should not outrage local feeling, while the French Revolution, though itself overwhelmed, bequeathed to the nineteenth century the ideals of liberty, equality and fraternity to be established upon a foundation more permanent than its original sponsors had been able to find. The Napoleonic conquest disseminated the ideals of the Revolution and, at the same time, brought to active life the dormant spirit of nationalism among the peoples whom Bonaparte conquered.

The nineteenth century saw the ideals of liberal reform and nationalism struggling for recognition, and their partial realisation in political forms. The Industrial Revolution enfranchised the middle class and built the ramparts of modern democracy by producing a new class of workers which more

and more demanded an enjoyment of political rights. It also intensified both nationalism and constitutional reform, first by fostering the policy of economic protection and then by extensions of the franchise and the organisation of national parties to resist the revolutionary aims of the Marxists whose doctrine was both anti-constitutional and anti-national. Lastly, the Great War gave a tremendous incentive to constitutionalism by destroying the illiberal governments which still existed, by creating new states out of hitherto oppressed nationalities, by driving both these, thereby, to establish constitutions on the basis of nationalism and democracy, by making them hold fast to these gains as a security against the evils of Bolshevism which the Industrial Revolution, the teaching of Karl Marx and the War had combined to produce, and finally by creating the will to international peace on constitutional lines through the establishment of the League of Nations.

The second fact that should emerge from this sketch is the oneness of constitutionalism in the modern world. From so unified a growth, developing through an epoch of ever-increasing intercommunication between peoples and places, the fundamental likeness between constitutions cannot fail to manifest itself. The basic purpose of a political constitution is, after all, the same wherever it appears, namely, social peace and progress and the safeguarding of individual and national well-being, and what we have to study is the difference in the means adopted to attain that end. It should, therefore, be our purpose to bear this fundamental likeness in mind, while showing the differences that exist among constitutions. It is for this reason that we shall next try to classify, on various grounds of likeness and difference, the political constitutions whose growth we have traced and whose details it is our purpose later to analyse.

READING

BRYCE : *History and Jurisprudence*, Vol. I, Essays i-iv. *Modern Democracies*, Vol. I, Ch. xvi.

BURNS : *Political Ideals*, Chs. ii, iii, v-viii, xi-xiii.

DICEY : *Law and Opinion*. Introduction and Lecture xii.

DICKINSON : *Greek View of Life*, Chs. ii and iii.

- DUNNING : *History of Political Theories*, Vol. I, pp. 1-16, 106-113, Chs. v, ix-xi ; Vol. II, pp. 1-7, 305-9, 335-340, Ch. vi ; Vol. III, pp. 38-50, 166-184, 340-7, 371-6, 395-407, Chs. iii and vi-viii.
- GETTELL : *Readings in Political Science*, pp. 113-122, 167-9, 201-203.
- HAYES : *History of Modern Europe*, Vol. II, Chs. xvii-xxx.
- JENKS : *State and Nation*, Ch. x.
- LASKI : *Grammar of Politics*, Pt. I, Ch. vi.
- LEACOCK : *Elements of Political Science*, Pt. I, Chs. ii and iii.
- MACIVER : *Modern State*, Chs. i-iv.
- MAITLAND : *Constitutional History of England*, pp. 165-329.
- WILSON : *State*, pp. 9-11, Chs. vi, xxi-xxii.

BOOKS FOR FURTHER STUDY

- BOWMAN : *The New World*.
- BRYCE : *Holy Roman Empire*.
- BUSSELL : *Roman Empire*.
- FOWLER : *City States of Greeks and Romans*.
- FREEMAN : *Comparative Politics*.
- FUSTEL DE COULANGES : *The Ancient City*.
- HAYES : *Essays on Nationalism*.
- JENKS : *Law and Politics in the Middle Ages*.
- MAITLAND : *Political Theories of the Middle Ages*.
- MUIR : (1) *Expansion of Europe*. (2) *National Self-Government*.
- MURRAY : *Political Consequences of the Reformation*.
- OSTROGORSKI : *Democracy and the Organisation of Political Parties*.
- POLLARD : (1) *Factors in American History*. (2) *Factors in Modern History*.
- RITCHIE : (1) *Natural Rights*. (2) *Principles of State Interference*.
- ROSE : *Nationality as a Factor in Modern History*.
- SMITH : *Church and State in the Middle Ages*.
- TOYNBEE : *Nationality and the War*.
- ZIMMERN : *The Greek Commonwealth*.

SUBJECTS FOR ESSAYS

1. Account for the attachment of the Greeks to the idea of the City-State.
2. In what sense was the Roman Empire a world-state ?
3. Discuss Feudalism as a transition between the fall of the Roman Empire and the emergence of the modern state.
4. Show what constitutional progress had been made in Western Europe before the Renaissance, and give some account of the latter in its political aspects.
5. What were the political consequences of the Reformation ?
6. Criticise the theory of the Social Contract as an explanation of the origin of the State.
7. Explain the importance of the American War of Independence and of the French Revolution in the history of constitutionalism.
8. Discuss the political consequences of the Industrial Revolution.
9. What was the constitutional situation in Europe on the eve of the Great War (1914-1918) ?
10. What effect has the Great War had upon constitutional development in Europe ?

•

PART II

COMPARATIVE CONSTITUTIONAL POLITICS

•

CHAPTER III

CLASSIFICATION OF CONSTITUTIONS

I.—THE OBSOLETE CLASSIFICATION OF ARISTOTLE AND OTHERS

A CLASSIFICATION of political constitutions or of states has often been undertaken in the past, but not in a way very satisfactory to the modern student. Among the earliest attempts to make such a classification we may note that of Aristotle who went much more fully into this matter than his master, Plato, who is very confusing on the subject, because he adopted one basis of classification in *The Republic* and quite a different one in another of his books, called *Politicus* or *The Statesman*. As to Aristotle, he first divided constitutions into two great classes, namely, good and bad, or true and perverted. His criterion here was the spirit informing the government. In each of the two great classes he found three types according to whether the government was in the hands of one, or few, or many. He thought this classification exhaustive and exclusive because, having carried out a thorough investigation into no less than 158 constitutions, Greek and Barbarian, existing in his day (the treatise containing the details of this investigation is unfortunately lost), he came to the conclusion that all states went through a cycle of revolutions. Thus a state began with the finest possible type of government—the rule of one man who, from the point of view of political authority, was the supremely virtuous one. This was the Monarchy or Royalty. But after a time such a virtuous man could no longer be produced; yet the rule of one remained, and his power was maintained by force. This type of government Aristotle called the Tyranny or Despotism. But the

tyrant would one day meet the opposition of a body of upright men who would overthrow him and rule in his stead. This was Aristocracy. Here, again, however, the spirit of the aristocracy would after a time begin to degenerate, and, though the rule of the Few would continue, it would cease to stand upon the basis of political virtue and found itself upon the use of force or corruption. This corrupt form of aristocracy Aristotle called Oligarchy. Finally, against this hateful rule there breaks out a popular uprising, and the Oligarchy is superseded by the Rule of the Many, or Democracy. In Aristotle's view, democracy so easily becomes licence and anarchy, that he, like Plato, sees it as degenerate by nature; the rule of the many cannot help being the rule of the mob (or, as he said, of the poor), which is the very negation of rule. Out of the darkness, then, again arises the supremely virtuous man, some Cæsar who alone can restore order and reason. The cycle is completed and begins all over again.

Aristotle's problem was to discover a form of government sufficiently stable to break this cycle, and he thought he had found it in that type of middle-class government which he called the Polity. It was his "golden mean" between the ideals of Monarchy and Aristocracy, so difficult to attain and sustain, and the perversions of Tyranny, Oligarchy, and Democracy, which were undesirable. So essential to stability in government did Aristotle consider the rule of the middle class to be that the term he used to describe it—the Polity—has now come to have a general application.

Aristotle's classification of constitutions may be summarised in tabular form as follows :

<i>Type of Constitution</i>	<i>Good or true form</i>	<i>Bad or perverted form</i>
Government of One Government of the Few Government of the Many	Monarchy or Royalty Aristocracy Polity	Tyranny or Despotism Oligarchy Democracy

It cannot be denied that we have much to learn from this part of Aristotle's teaching. For example, he pointed out

with great emphasis that, since the object of all the citizens of a state must necessarily be the safety of their association, everything must be sacrificed to the maintenance of the constitution which is the basis of that safety, and that any action on the part of any citizen outside the bounds of the constitution (whether an unconstitutional act carried out by the government of the day, on the one hand, or what we have come to call "direct action" attempted by non-political associations, on the other) should not for a moment be tolerated—an argument which has even greater force in a modern democracy than it had in Aristotle's ancient polity. Again, it would be difficult to dispute the fact that the history of the world since his time has supplied many illustrations of a cycle of deteriorations and revolutions after the manner of Aristotle's analysis.

Nevertheless, we have to abandon Aristotle's classification of constitutions, since it is quite inapplicable to existing political conditions. It is no longer useful, for example, to employ the term Monarchy to describe a modern state, because it tells us nothing distinctive about it. Again, the term Democracy applies to so many modern states that it no longer helps us to a division of them. Nor are the classifications of some political philosophers more recent than Aristotle helpful in modern conditions. Montesquieu, for instance, in the middle of the eighteenth century, divided governments into three classes—republican, monarchical, and despotic. Rousseau, again, a few years later, classified the forms of government into three—autocratic, aristocratic, and democratic—but he held that there was only one form of state, namely, the Republic. Kant, a little later, saw three kinds of states corresponding to Rousseau's three forms of government, but only two forms of government—republican and despotic. But the term Republic in the modern world helps us no more than the term Monarchy to understand the form of the state to which we are referring. Take, for example, three existing republics—the United States of America, Switzerland and France—and two existing monarchies—Great Britain and Italy. It is obviously fallacious to make

this a basis of division and to say that the United States, Switzerland, and France belong to one distinctive type of states and Britain and Italy to another. To do so would be to make ourselves the mere slaves of nomenclature. Coming to our own epoch, we find the modern German writer, Bluntschli, attempting to extend Aristotle's triple division by adding to it a fourth type of state which he called Ideocracy or Theocracy, in which the supreme ruler is conceived to be God or some super-human spirit or idea, as is seen, for example, in the original Jewish state and in Mohammedan countries. But this division carries us no farther in our endeavour to classify states according to real and existing likenesses and differences. We must clearly seek our ground elsewhere.

II.—THE BASES OF A MODERN CLASSIFICATION

The truth is, it is impossible to divide states into classes by taking each state as a whole in turn, because the totality of powers of all states is the same; that is to say, every state is a sovereign body politic. If a community is not this, it is not a State. As an American writer, Willoughby, puts it, "the only manner in which states may be differentiated is according to the structural peculiarities of their governmental organisation." As soon as we begin to think about this in the light of that evolution of modern constitutionalism which we have sketched in the preceding chapter, a living classification begins to shape itself. We saw how all the communities of the Western World have been affected to a greater or less degree by the same influences, and likenesses among them are therefore bound to manifest themselves. On the other hand, nationalism has proved such a potent force for separatism that differences among them are equally strongly marked. In making our classification, therefore, we must find those attributes which are common to all modern constitutional states and divide the states according to the peculiarities of their organisation. In other words, we must examine each of the attributes in turn and divide our states

into classes according to whether they conform to this or that variation of the attribute in question.

What those common attributes are we have already indicated in the opening chapter, where we saw that the government of every constitutional state has three separate departments, namely, the legislature, the executive, and the judiciary. The basis of our classification must be found, therefore, under the five following heads : (1) the nature of the state to which the constitution applies ; (2) the nature of the constitution itself ; (3) the nature of the legislature ; (4) the nature of the executive ; (5) the nature of the judiciary.

The disadvantage of this classification is that it involves the necessity of dealing with each state several times, each time in respect of one attribute, for it by no means follows that because State A resembles State B in respect of the first attribute, it resembles it in respect of the second, or because State C differs from State D in respect of the third attribute, it differs from it in respect of the fourth. Indeed, it is this very truth which makes this sort of classification the only one in keeping with existing conditions, and that is an advantage which must be considered to override any disadvantages this method of classification may possess.

This classification, whose details we shall now examine, is based upon various suggestions made by three modern English political scientists, the late Lord Bryce, Professor Edward Jenks, and Sir J. A. R. Marriott, none of whom, however, worked them out as we shall here. It does not pretend to be exhaustive, because much of the subject-matter of comparative constitutional politics defies classification. But it does adequately cover sufficient ground to introduce the student to the subject. Some important matters which remain outside the scope of this classification will be dealt with in the third part of this book. Meanwhile, let us look more closely into our classification.

III.—THE NATURE OF THE STATE TO WHICH THE CONSTITUTION APPLIES

Whether Unitary or Federal

Every modern constitutional state belongs to one of two great classes—unitary or federal—and this introduces a difference of the very first importance. A unitary state is one organised under a single central government, that is to say, whatever powers are possessed by the various districts within the area administered as a whole by the central government, are held at the discretion of that government, and the central power is supreme over the whole without any restrictions imposed by any law granting special powers to its parts. “Unitarianism” in the political sense has been well defined by the late Professor Dicey as “the habitual exercise of supreme legislative authority by one central power.” Examples of unitary states are the United Kingdom, France and Italy. In each of these cases there is no question of any limitation being placed upon the power of the central authority by any law-making body belonging to any smaller part of the state. Where, as in the case of the United Kingdom, local government is strong, there is still no restriction upon the central power, which can override the Local Authorities; for since, in modern times, the central authority has granted whatever powers are possessed by them, it can equally modify or withdraw those powers. Local Authorities in England are, in fact, not law-making but by-law-making bodies.

A federal state is one in which a number of co-ordinate states unite for certain common purposes. To quote again Professor Dicey, “A federal state is a political contrivance intended to reconcile national unity and power with the maintenance of ‘state rights.’” We have to distinguish clearly between local government in a unitary state and state government within a federal state. In a federal state the powers of the central or federal authority are limited by certain powers secured to the units which have united for common purposes. We note, therefore, in a federal state a distinction

of powers between the federal authority and the authorities of the units forming the federation. This being the case, there must be some authority which determines this distribution. This authority is the Constitution itself. A federal constitution partakes of the character of a treaty. It is an arrangement made between certain bodies politic which wish to retain certain rights. Thus the constitution will state either the rights that are to be retained by the federating units or the rights that the federal authority takes over. In either case it stands to reason that neither the ordinary legislatures of the individual states nor the legislature of the union can have the power to alter the constitution without some special means being adopted for discovering the views of the constituent members. These means will in a true federal state be definitely stated in the constitution. There must further be some sort of authority to decide between the federal power and the state power if they should happen to come into conflict. This authority is generally a supreme court of judges.

Thus, completely developed federalism shows three clearly marked characteristics—first, the supremacy of the constitution, that is to say, the ultimate power is the document itself upon which the federation is established; secondly, the distribution of powers between the federal state and the co-ordinate states forming it; and thirdly, some supreme authority to settle any dispute which may arise between the federal and state authorities. Not all states which we call federal states are exactly like this. Federalism is, in fact, of varying shades of completeness and exactitude. Those that do not exactly conform to the type of completely federalised state we may call quasi-federal states. These differences we shall examine more closely in a later chapter. Here we may note among existing federal states, the United States of America, Switzerland, Australia, Germany and Canada. Though all these federations vary very much in detail, they all conform to the basic rule of a federal state, that each is constituted from a number of minor states which desire union but do not desire unity.

It will have been observed that, although we have spoken of a federal state, we have referred to the federating units themselves also as states. This is due solely to the paucity of language. As soon as a number of states have federated they become constituent parts of a federal state, and thereby cease to be states themselves in the full sense, for they have sacrificed some part of that essential quality of a state which we have emphasised earlier—namely, sovereignty. Thus the forty-eight states of the American Commonwealth are not true states. The union of the forty-eight states is the real state. Yet the states retain a wide legislative power, their legislatures being what we may describe as semi-sovereign law-making bodies. Again, none of the six states of the Australian Commonwealth is a real state. The Commonwealth is the state. And it is a state in spite of the fact that it belongs to the British Empire, which is not a federation. We shall have a good deal more to say about this in a later chapter.

From all that has been said, it is clear that we have here a very sound basis for the classification of modern constitutional states. For, although, as we shall show, there are various kinds of unitary states and different kinds of federal states, no constitutional state of to-day can be entirely outside these two categories.

We might have added here a subsidiary basis of classification under this same head, namely, whether the state is centralised or localised ; that is to say, whether there is a strong element of local government within the state or not. Great Britain, for example, is a localised state because local government plays a large part in the political life of the community. France, on the other hand, is a highly centralised state in which very little responsibility is thrown upon local authorities, and even when it is, it is jealously watched and limited by an emissary of the central government known as the Prefect. But this question, although in many ways of great importance, must not detain us, since it would lead us too far from our main subject. We mention it here in order to emphasise the difference between local government and state government

(within a federation), a difference clearly illustrated in the fact that, while France, a unitary state, has hardly any local government, each of the states forming the United States—a federal state—has a very active local government of which it is extremely proud and jealous.

IV.—THE NATURE OF THE CONSTITUTION ITSELF

(a) Whether Unwritten or Written a False Distinction

Constitutions are frequently divided into unwritten and written. But this is really a false distinction, because there is no constitution which is entirely unwritten and no constitution entirely written. A constitution generally called written is one in the form of a document which has special sanctity. A constitution generally called unwritten is one which has grown up upon the basis of custom rather than of written law. But sometimes the so-called written constitution is a very complete instrument in which the framers of the constitution have attempted to arrange for every conceivable contingency in its operation. In other cases, the written constitution is found in a number of fundamental laws which the constitution-makers have either framed or adopted with a view to giving as wide a scope as possible to the process of ordinary legislation for the development of the constitution within the framework thus set.

The Constitution of Great Britain is said to be unwritten, but there are certain written laws or statutes which have very considerably modified the Constitution. For example, the Bill of Rights (1689) is a law of the Constitution as also are the various Franchise Acts of the nineteenth and twentieth centuries, and especially the Parliament Act of 1911, which not only curtailed the power of the House of Lords but set a new limit to the life of a parliament. On the other hand, the Constitution of the United States is the most completely written of all constitutions, yet certain unwritten conventions or customs have grown up in the very teeth of the will of the Fathers of the Constitution, without any verbal

alteration, in this connection, in the Constitution itself. Note, for example, Article II, Section I, of the Constitution (together with the Twelfth Amendment), which says that for the election of the President, the people shall choose electors who shall meet and elect, by a majority, whomsoever they will. But this, as we shall show later, does not in practice happen at all.

We repeat, then, that a classification of constitutions on the basis of whether they are unwritten or written is illusory. It is, of course, sometimes necessary to distinguish between the so-called unwritten and the so-called written constitution, and, whenever it is necessary for us to do so, we shall refer to the former as a non-documentary and to the latter as a documentary constitution.

(b) Whether Flexible or Rigid

The true ground of division, by virtue of the nature of the constitution itself, is whether it is flexible or rigid. It is a frequently-held but erroneous impression that this is the same as saying non-documentary or documentary. Now, while it is true that a non-documentary constitution cannot be other than flexible, it is quite possible for a documentary constitution not to be rigid. What, then, is it that makes a constitution flexible or rigid? The whole ground of difference here is whether the process of constitutional law-making is or is not identical with the process of ordinary law-making. The constitution which can be altered or amended without any special machinery is a flexible constitution. The constitution which requires special procedure for its alteration or amendment is a rigid constitution.

In the case of Great Britain, for example, exactly the same legislative procedure is followed whether the bill to be passed concerns, say, the placing of restrictions upon the methods of the trainers of performing animals or a radical alteration in the powers of the House of Lords. In the United Kingdom, in fact, there is no such thing as a distinctive constitutional law. The Constitution of the United Kingdom is, therefore, flexible. The same is true of the kingdom of Italy. Though

Italy has a documentary Constitution (first promulgated by Sardinia in 1848), no special procedure for altering it is contained in the Constitution. How flexible the Italian Constitution is, in spite of its being documentary, may be seen in the work of Signor Mussolini, who has changed its spirit very considerably without actually breaking the letter of the Constitution. From these facts we see that the Constitution of Italy is flexible.

So we reach this rather curious paradox—that, although a constitution may be very much written, that is to say, although it may consist of a large bundle of isolated statutes, it may still be flexible. Indeed, the very fact that it does consist of a large number of laws passed at various times will argue its flexibility because where special machinery has to be set in motion for constitutional amendment, the amendments are not likely to be so numerous. In further emphasis of the paradox, we may note that the French Constitution, though a very slightly written instrument, is, none the less, rigid, simply because it requires a special procedure to change its fundamental laws. In the United States, again, the Constitution is rigid because it cannot be amended without special machinery being set in motion for the purpose. Indeed, in this case it is necessarily so, because the Constitution definitely states what powers the Federal Government possesses, and if the latter goes beyond these, it is not bending but breaking the Constitution. In short, the constitution which cannot be bent without being broken is a rigid constitution.

V.—THE NATURE OF THE LEGISLATURE

The most important piece of machinery in the modern constitutional state is the legislature or law-making body. Several ways of classifying states on this ground suggest themselves, but most of them are not very fruitful. For example, a division of modern legislatures into those made up of one House and those having two Chambers is not very real because it would put all the important states in one category, and all the unimportant states in the other, since only such

post-War states as Finland, Lithuania, Esthonia and Latvia, as well as Bulgaria and Turkey, have a uni-cameral legislature. Again, to attempt to classify legislatures by methods of parliamentary procedure would carry us nowhere, since, broadly speaking, they all work in the same manner—*i.e.* by committees, carrying bills through various readings, and so on. What is far more vital is to observe the ways in which legislatures, and both the Lower and Upper Houses of the important ones, are brought into being, for this is where the citizen's contact comes. In this connection, modern legislatures are divisible into two types by virtue of two classes of facts. First, we may divide them on the ground of the nature of the electoral system by which members of the Lower House are chosen. Under this heading come the two questions of franchise, or the right to vote, and of constituency or electoral area. Secondly, we may divide them on the ground of the nature of the Second Chamber or Upper House.

(a) As to the Electoral System

(i) *Kind of Franchise.*—First, with regard to the electoral system, constitutional states fall broadly into two sorts, namely, those which have manhood suffrage and those which have adult suffrage. By manhood suffrage is meant the possession of the right to vote by all males above a certain age without qualification, apart from the usual disfranchisement of paupers, criminals, and lunatics. By adult suffrage is meant the same right enjoyed by both males and females.

In this division we have not gone quite far enough because some states with manhood suffrage still have some sort of qualification for voting for the Lower House, for example, in Japan, where the test is to write the name of the candidate on the voting-paper—which seems, looking at Japanese names with occidental eyes, a very formidable test; while, in some others, female suffrage is not at present as complete as male suffrage, which was the case in Great Britain up till 1928. We shall observe these details more closely later on. Here suffice it to note the four main kinds of suffrage in the modern

constitutional state—*viz.* manhood suffrage, qualified manhood suffrage, adult suffrage, and qualified adult suffrage.

(ii) *Kind of Constituency.*—The nature of the constituency provides a further basis of distinction, from the point of view of the electoral system, among existing constitutional states. This distinction is between those states in which the constituency returns one (or at most, two) and those in which it returns several members. The latter is generally associated with that innovation of democracy known as Proportional Representation, the object of which is to secure the representation of minorities which are otherwise voiceless in the elected assembly. But the multi-member constituency, as we may call it, does not necessarily involve the principle of Proportional Representation. In France, for example, the constituency was, between 1919 and 1927, merely a collection of adjacent and formerly separate constituencies. Whereas the French, before 1919, voted by *arrondissements*, after that for eight years they voted by *départements* (a system known as *scrutin de liste*). France has, in fact, since the establishment of the Third Republic, tried both methods by turns, and has now reverted to the single-member constituency. This method of enlarging the constituency has been carried to an extreme in post-War Italy, where the latest electoral law has, in effect, transformed the whole country into one vast electoral college.

We shall deal with this question more fully in a later chapter. Here it is only necessary to observe that this question helps us to divide modern constitutional states into two great types. In some states, however, the single-member constituency is used for elections to the Lower House and the multi-member one for those to the Upper. This, for instance, is the case in the Commonwealth of Australia. It is interesting for English voters, who, except in one or two types of election, know only the single-member principle, to speculate upon the advantages and disadvantages of a possible rearrangement of constituencies in this sense in the democracy of the future.

(b) Types of Second Chamber

The division as to types of Second Chamber forms the ground for a very interesting comparative study in modern constitutionalism. The main divisions under this head are two—the Second Chamber is either elective or non-elective. Lying between these two, however, there is a considerable indeterminate area filled by one or two well-known examples in which the Second Chamber is partly elective and partly non-elective, as in the case of Spain, Japan, the Union of South Africa, and the new kingdom of Egypt. Still, the division forms a good method of approach to the study of the problem of the Second Chamber, to which we shall devote a chapter later.

Among the best known of the elected Upper Houses are the Senate in the United States, France, Australia, and the Irish Free State, and the Council of States (*i.e.* Cantons) in Switzerland. The most noteworthy instances of non-elective Second Chambers are the House of Lords in Great Britain, and the Senate in Italy and Canada. Generally speaking, where the Second Chamber is elected, it is, as might be expected, a much greater force than where it is not. Thus, for example, whereas the Senate in France plays a large part in French parliamentary life, in Great Britain the power of the House of Lords is so curtailed as to be almost negligible, or, at least, to be so weak as to make every party recognise its reform as an urgent need.

VI.—THE NATURE OF THE EXECUTIVE

Whether Parliamentary or Non-Parliamentary

Our fourth line of division concerns the nature of the executive. It is, as we have said earlier, the business of the executive to formulate policy and to execute or administer that policy when it has gained the sanction of law through the legislature. In all constitutional states there is a check or limitation upon the power of the executive. The executive,

that is to say, is always responsible to somebody. There is an ultimate sense, of course, in which it is true to say that the executive, under modern conditions, is always responsible to the people, but this, being universally true, will not help us in our classification. The question we wish rather to answer here is, where does the immediate responsibility lie? The answer to this question gives us a basis for dividing constitutional states into two great classes, for, in practice, the executive is either responsible to Parliament (*i.e.* the legislature), which has the power to remove it should it lose the confidence of that body, or it is subject to some more remote check, as, for example, by means of a periodical presidential election. If it is immediately responsible to Parliament, it is said to be a Parliamentary Executive. But if it is immediately responsible at definitely arranged periods to some wider body and is not subject to removal by parliamentary action, it is said to be a Non-Parliamentary or a Fixed Executive.

This difference introduces one of the most important considerations in modern constitutional politics. It is here especially that we see the obsolescence of a division based upon such terms as Monarchy and Republic. Taking as examples Great Britain and France, we should hereby be misled into supposing that the executive in the first case is the King; in the second, the President. Now neither of these things is true. On the contrary, the executive in both cases is the Cabinet, the king and the president being, politically considered, powerless against the decisions of their ministers. The last king in England who tried actually to interfere in the work of the executive was George III (1760-1820), and he quite failed to achieve his purpose. The last president in France who tried to interfere in the work of the executive was M. Millerand, and for so doing he was forced to resign.

It is clear, therefore, that all states in which the executive is responsible to the elected assembly belong to a distinct category. This type of government is alternately known as Cabinet Government, since the executive in all such cases has been modelled more or less upon the type of ministry which was definitely founded in England in the eighteenth

century ; or Responsible Government, a term most commonly confined to the Self-Governing Dominions of the British Commonwealth, where the establishment of Cabinet Government has been associated with the transference of ministerial responsibility from the British Government to the elected assembly in each of the Dominions.

The only considerable state in the world to-day where the executive is fixed is the American Commonwealth. It was also fixed in the pre-War German Empire, though in a quite different manner from America. In pre-War Germany the Emperor himself was the Executive in a very real sense, as he worked through an Imperial Chancellor whom he could appoint and dismiss at will, as was demonstrated, for example, in the famous "dropping the pilot" episode in 1890 when the Kaiser, Wilhelm II, removed Bismarck. But this is past in Germany ; there the executive is now a parliamentary one, and it is not perhaps without significance that the occasion of this great reform in Germany was the late President Wilson's demand for an assurance that, in his peace parleys with Germany in 1918, he was addressing a democratic government. The executive in the Turkish Republic is also to some extent fixed. But this is a peculiar case where the President holds a four-fold presidency—of the Republic, of the Cabinet, of the Assembly, and of the majority party in the Chamber—a constitutional venture without parallel in modern times. The Fascist régime in Italy, under the leadership of Signor Mussolini, also tends to transform a parliamentary into a non-parliamentary or fixed executive while still, however, retaining the forms of Cabinet Government. (2)

In the United States the President and his Ministers form the executive, but far from the Ministers being subject to the will of Congress (Parliament), they are not allowed to speak or vote in either the House of Representatives or the Senate. The only personal contact between the Executive and the Legislature in this case lies through the President's message to Congress which is delivered once a year (or oftener, if unusual circumstances demand that he shall meet it in special session). The check upon the executive in this case lies in

the election of the President which takes place every four years. But the President, once elected, may select or dismiss his ministers as he wills (under certain Senatorial restrictions), and nothing can remove the President during the fixed term of his office, except actual misconduct for which he can be impeached—*i.e.* tried by Congress—and at the end of his term nought save the will of the people, as expressed in the election, can change him. Because the type of executive which we have called non-parliamentary or fixed is thus intimately associated with the American presidency, it is otherwise known as Presidential Government, in contradistinction to Cabinet Government.

VII.—THE NATURE OF THE JUDICIARY

Whether subject to Rule of Law or under Administrative Law

Our last basis of classification concerns the third of the three great departments of government, the judiciary, and a consideration of it arises out of the subject which we have just been treating. As in the case of the legislature, there might be several possible ways of classifying judiciaries in constitutional states, but most of them would invade territory we have already occupied and shall later exploit. For example, we might divide them into those which can question and interpret the acts of the legislature, as in the United States, and those which are bound to apply such acts without question, as in the United Kingdom. But this is a distinction which we shall amplify in our more detailed discussions of the nature of the State and of the Constitution. The really vital distinction for us here is one that concerns the connection of the judiciary with the executive.

In most Continental states there is a special system of law to protect the servants of the state in the discharge of their official duties, if they should thereby be guilty of acts which, committed by unofficial persons, would be unlawful. This system was born in France, where it goes by the name of *Droit Administratif*. Most Continental states, which have

been satisfied in other respects to model their executive systems upon the British pattern, have, in adopting an administrative law, departed utterly from the Anglo-Saxon spirit. For in Britain and those communities which have sprung directly from her, and have carried with them her legal, if not always her constitutional, system, a special system of administrative law for the protection of government officials is quite unknown. In the United Kingdom, in the Self-Governing Dominions of the British Crown, in the United States and in the Latin American Republics (mostly modelled upon the United States), the official is in precisely the same legal position as the private citizen, and the judiciary cannot take cognisance of the plea of state necessity in extenuation of acts on the part of state officials calculated to infringe the liberty of the subject. This non-immunity of the official is known as the "Rule of Law."

The distinction here lies in the difference of legal systems. It is the Common Law of England, so different in its origins and growth from the legal codes of Continental states, that is the foundation of this Rule of Law, which leaves the government official thus unprotected; while on the Continent the more formal methods of legal codification have known how to protect the servant of the state by special administrative courts (acting outside the legal code) which give him a prerogative before the law over the private citizen.

We may summarise this distinction, then, by dividing states into two types, thus: (1) Common Law States, whose executive, being subject to the operation of the Rule of Law, is unprotected; and (2) Prerogative States, which have an executive protected by a special system of administrative law.

.

VIII.—SUMMARY

The following table summarises our classification :

CLASSIFICATION OF MODERN CONSTITUTIONAL STATES

<i>Ground of division</i>	<i>First type</i>	<i>Second type</i>
1. The nature of the State to which the Constitution applies.	Unitary.	Federal or Quasi-Federal.
2. The nature of the Constitution itself.	Flexible (not necessarily unwritten).	Rigid (not necessarily fully written).
3. The nature of the Legislature.	i. (a) Manhood Suffrage. (b) Single-member Constituency. ii. Elective or partially elective Second Chamber.	Adult Suffrage. Multi-member Constituency. Non-elective Second Chamber.
4. The nature of the Executive.	Parliamentary.	Non-Parliamentary or Fixed.
5. The nature of the Judiciary.	In Common Law States (subject to the Rule of Law).	In Prerogative States (under Administrative Law).

In examining the table the reader must again remind himself that any one state which he may select for examination does not necessarily conform to one type in all its characteristics. Each state must be judged on each ground of division separately. Let us take two states at random : Italy and the United States. Italy conforms to the first type on the first ground ; to the first type on the second ground ; to the first type on the third ground (i, a) ; to the second type on the third ground (i, b) ; to the second type on the third ground (ii) ; to the first type on the fourth ground (with a tendency now to conform to the second type on this ground), and to the second type on the fifth ground. In short, Italy is a unitary state with a flexible constitution, a legislature elected on manhood suffrage, with multi-member constituencies and

a non-elective Second Chamber, a parliamentary executive (albeit tending to become non-parliamentary or fixed), and a special administrative law to protect the servants of the state. On the other hand, the American union of states, known as the United States, conforms to the second type on the first ground ; to the second type on the second ground ; to the second type on the third ground (i, *a*) ; to the first type on the third ground (i, *b*) ; to the first type on the third ground (ii) ; to the second type on the fourth ground ; and to the first type on the fifth ground. In other words, the United States form a federal state, with a rigid constitution, a legislature elected on adult suffrage, with single-member constituencies and an elected Second Chamber, and a non-parliamentary or fixed executive subject to the Rule of Law.(3)

We shall now proceed to a fuller discussion of each of these characteristics of constitutional states.

READING

BRYCE : *History and Jurisprudence*, Vol. I, Essay iii. *Modern Democracies*, Vol. II, pp. 506-8.

DICEY : *Law of Constitution*, pp. lxxv-lxxx, 121-2, 134-140, 480-8.

DUNNING : *Political Theories*, Vol. I, pp. 33-37, 62-93.

GETTELL : *Readings in Political Science*, pp. 244-8, 252, 266-71, 284-6, 344-6, 391-3.

JENKS : *State and Nation*, pp. 259-275.

LEACOCK : *Elements of Political Science*, pp. 41-3, 108-132, 152-160, and Pt. II, Chs. iii and iv.

MARRIOTT : *English Political Institutions*, Ch. i. *Mechanism of the Modern State*, Vol. I, Ch. ii.

SIDGWICK : *Elements of Politics*, Ch. xxx.

WILSON : *State*, pp. 31-2.

SUBJECTS FOR ESSAYS

1. How did Aristotle classify the political constitutions of his day and in what respects must we regard his classification as obsolete ?
2. Suggest a classification of constitutions in harmony with modern conditions.
3. Define the terms unitary and federal as applied to modern states.
4. What is the weakness of the division of modern constitutions into written and unwritten ?
5. Explain what is meant by the terms flexible and rigid as applied to constitutions.

6. What is the importance of the electoral machinery in connection with the constitution of the legislature in the modern state ?

7. Explain the terms franchise and constituency, and discuss the parts they play in the election of parliamentary representatives.

8. Detail the types of Second Chamber in the modern state, giving examples in each category.

9. How do you draw a distinction between the parliamentary and non-parliamentary or fixed executive ?

10. What do you understand by the term " Rule of Law " ? Show how the legal systems of states which enjoy this differ from those which do not.

CHAPTER IV

THE UNITARY STATE

I.—SOVEREIGNTY, INTERNAL AND EXTERNAL

WE have said that a unitary state is one in which we find "the habitual exercise of supreme legislative authority by one central power," while a federal state is "a political contrivance intended to reconcile national unity and power with the maintenance of 'state rights,'" one, in short, in which the legislative authority is divided between a central or federal power and local units, sometimes called states or cantons and sometimes provinces, according to the fullness of their power. To make this clearer, we must add something to our introductory remarks on the subject of sovereignty. The problem of sovereignty is one of the utmost difficulty. Its attempted elucidation has filled pages of the books of the political philosophers, and it remains the cardinal question of the politics of our time. As we have seen earlier, sovereignty has two aspects, internal and external. We have defined internal sovereignty as the supremacy of a person or body of persons in the state over the individuals or associations of individuals within the area of its jurisdiction, and external sovereignty as the absolute independence of one state as a whole with reference to all other states.

As to internal sovereignty, the whole question revolves upon the meaning of the word State. Once grant that the state is nothing if it is not the whole association of individuals within it, organised politically, and you cannot fail to appreciate the logic of Rousseau's contention that sovereignty is popular, indivisible and inalienable. For, although the sovereignty is said to be vested in the rulers of the state,

ultimately it lies within the ruled. Even the most despotic government that ever existed is limited in its absoluteness by the truth that, as David Hume long ago pointed out, force is always on the side of the governed, who might, if driven far enough by outraged opinion, carry a revolution to overthrow the government. As we advance from despotic to constitutional states this limitation becomes more obvious. "If a legislature," wrote Leslie Stephen, "decided that all blue-eyed babies should be murdered, the preservation of blue-eyed babies would be illegal; but legislators must go mad before they could pass such a law, and subjects be idiotic before they could submit to it."

We have spoken of the distinction between the legal sovereign and the political sovereign, and have said that in Great Britain, for example, the legal sovereign is the "King in Parliament," and the political sovereign is the electorate which can, if it will, mould the legal sovereign to its desires. If you say that in practice it is hard to see that this happens you are not denying the reality of the political sovereignty of the people, but only pointing out that the medium for the expression of the popular will is not working well. At least it is fair to say that modern representative government does, as far as the world has yet been able to discover, bring the legal and political sovereigns as near to coincidence as it is possible to bring them. This representative government is established through usage and laws or through one finished document, either of which is called a constitution. The constitution is, from one point of view, an attempt to define the relationship between the government and the governed. Thus, while in theory the sovereignty of the legal sovereign remains illimitable and the sovereignty of the people inalienable, in practice the sovereignty of the one is very considerably limited and the sovereignty of the other to a great extent surrendered for the sake of social peace and political harmony.

The constitutional state, then, is the area of jurisdiction of a particular government whose functions are formulated in the constitution of that state. The constitution, therefore,

defines the limits of the state both internally and externally, and the limits of the state become vital when we consider it in its external relations. External, like internal, sovereignty, is in theory unlimited, but in practice it is limited either positively by a desire for peace or some material advantage on the part of the community concerned, or negatively by a fear of the power of some neighbouring state to crush that community. Either of these considerations may lead a state into an association with others more or less real according to its conditions. The simplest form of such an association is an alliance which may be either defensive—*i.e.* to give the association armed effect if any of its members are attacked—or offensive—*i.e.* to arm the association even though one of its members is the aggressor. Now, this is not a formal limitation of sovereignty, since any member of such an association is free to withdraw from its conditions whenever it feels inclined, even though the conditions of the alliance may lay down limits of time. A good example of this was seen when Italy withdrew from the Triple Alliance with Germany and Austria at the outbreak of war in 1914, and in the following year allied herself with the enemies of her former allies. Or a state may pledge itself in association with others to perform or not to perform certain acts in certain eventualities. But this is not a real limitation of sovereignty either, as we saw in Germany's invasion of Belgium in 1914. A further step is taken when a personal union occurs, where two or more states are united only in the sense that the same monarch reigns over them. Such was the case, for example, between Britain and Hanover from 1714 to 1837. Two or more states so dynastically united may go further and face the world as a diplomatic unit, as, for example, did Austria and Hungary from 1867 to 1918, and Norway and Sweden from 1815 to 1905. But the mere act of making an alliance, the mere act of crowning the same head more than once, the mere act of facing the world as a diplomatic unit—none of these acts makes one new state out of two or more pre-existing ones. For a state has sovereign power, internal and external, and only a formal limitation of that sovereignty can actually affect its statehood.

II.—THE PROCESS OF STATE INTEGRATION

The nature of the state, then, is determined by its sovereignty. There is no state that we know to-day which has not been built into its existing form by a process of integration or knitting together. This is true whether we consider states with very ancient roots, like Great Britain and France, or the very latest political creations, like Czecho-Slovakia and Jugo-Slavia. For the process of integration may be either slow or rapid according to the circumstances of its inception and growth. The particular process of integration may have been decided by war, where one local unit has conquered another and simply incorporated it. This was the case in the early history of Rome, of England, and of France. Or the chances of war may have simultaneously liberated a number of neighbouring units which were by that hazard faced with the problem of founding some sort of union for their common advantage. This was the case with the American Colonies in 1783 and with the Serbs, Croats, and Slovenes in 1918. Or, again, a number of isolated units may have come to realise the need for union through some danger not hitherto thought to exist, which was the case with Australia at the end of the nineteenth century.

But however it may be, when faced with this question of integration the communities concerned must decide whether they will integrate by federation or by mutual absorption. If they integrate by federation, then the sovereignty is, in practice at least, divided, the federating units retaining some share of it separately and surrendering a share to the central organ which they thereby establish. We are bound to admit that in the case of a federation there is, for all practical purposes, a division of sovereignty. It is true, as we have said, that theoretically sovereignty is indivisible, but there is no other logical way of facing the peculiar difficulty of a federal system than to say that the two authorities—of the federation and of the states—share the sovereignty which the federating states formerly possessed individually. This, be it observed, is something quite different from an alliance. The federating

units abandon completely their external sovereignty to the common authority, and they therefore retain their internal sovereignty only in a truncated form, since there are certain powers that the government of each unit formerly exercised over its individual citizens which now only the federal government can exercise.

Ultimately, of course, the sovereignty is not divided. The legal sovereign in a federation is the constitution itself, which sets out the division of powers between the federal and state authorities. When a number of states integrate by federation they agree to submit to the conditions laid down by the constitution. The constitution is a treaty, but a treaty of very special sanctity which none of the contracting parties can infringe without following the procedure set out therein. We may therefore rightly describe the states in a federal system as subsidiary sovereign bodies.

If, on the other hand, the integration takes the form of absorption, no powers are retained by the associating units. They appear separately as two or more sovereign powers, only to make a treaty whereby they are absorbed and melted into one. All powers are mutually abandoned to a common organ which is then not a federal but a central government which holds both the internal and external sovereignty absolutely and recognises no subsidiary sovereign bodies by virtue of this arrangement. Such is a unitary state.

III.—THE ESSENTIAL QUALITY OF THE UNITARY STATE

We have said that, for practical purposes, we may usefully speak of a divided sovereignty in the case of a federal state. The essence of a unitary state is that the sovereignty is undivided, or, in other words, that the powers of the central government are unrestricted, for the constitution of a unitary state does not admit of any other law-making body than the central one. If the central power finds it convenient to delegate powers to minor bodies—whether they be local authorities or colonial authorities—it does so, be it remembered, from the plenitude of its own authority and not because the

constitution says it must, or because the various parts of the state have a separate identity which they have to some extent retained on joining into a larger body. It does not mean the absence of subsidiary law-making bodies, but it does mean that they exist and can be abolished at the discretion of the central authority. It does, therefore, mean that by no stretch of the meaning of words can those subsidiary bodies be called subsidiary sovereign bodies. And, finally, it means that there is no possibility of the central and local authorities coming into a conflict with which the central government has not the legal power to cope. ✓

✓ The two essential qualities of a unitary state may therefore be said to be (1) the supremacy of the central parliament and (2) the absence of subsidiary sovereign bodies.

(1) ✓ Wherever we find a unitary state we find the supremacy of the central parliament. ✓ Frequently, in a unitary state, as we shall see when we come to discuss the rigid constitution, there are certain sorts of acts which the constitution does not allow the ordinary central legislature to pass except under special conditions. But the central parliament in a federal state is checked in a more complete sense than this; for a federal constitution not only lays down the means of changing the constitution, but indicates what are the powers of the federal authorities or else those of the federating units. Hence in a federal state there are two kinds of legislature—the federal and the state—each with its own province, and neither supreme, whereas in a unitary state there is only one kind of legislature, which (within the limits laid down in the constitution, if it is a rigid one) is supreme. ✓

(2) The absence of subsidiary sovereign bodies is the second mark of a unitary state. The distinction which we have here drawn between subsidiary law-making bodies and subsidiary sovereign bodies is the distinction between the local authorities in a unitary state and the state authorities in a federal state. This distinction is realised as soon as we think of the state authority in a federation in relation to the federal authority rather than in relation to the constitution. The state authority has rights which the federal authority

is incapable of enhancing or diminishing. The only power that can do that is the constitution itself when it undergoes amendment in that direction—a process which can be achieved only by consulting the desires of the various states forming the federation. Thus, in the case of the federation called the United States of America, the state of Virginia, say, has absolute powers in certain directions laid down in the Constitution. Of these no act of the federal legislature (Congress) can deprive Virginia until the Constitution is changed (and this, of course, Congress has not the power to do) for that purpose. Compare this with the relation between a local authority and the central legislature of a unitary state. In the unitary state called the United Kingdom, the London County Council, say, has powers granted it, not by the Constitution but by an act of the Parliament at Westminster. Of any or all of such powers the Parliament at Westminster could deprive the London County Council at any time by its own act. The difference is that the Congress of the United States could in no conceivable circumstances abolish the state of Virginia, but the Parliament of the United Kingdom could abolish the London County Council without reference to any superior force.

In short, if a central authority has beneath it authorities with which it is powerless by the ordinary processes of legislation to interfere (otherwise than in the way laid down in the constitution), then that central authority is a federal authority, and the state over which it has this limited jurisdiction is a federal state; whereas, if a central authority has beneath it only those authorities which it can create or abolish at will, it is a supreme authority, and the state within the limits of which it has this unlimited jurisdiction is a unitary state. We shall now turn to a detailed study of some important unitary states of the modern world.

IV.—HISTORICAL UNITARIANISM OF THE UNITED KINGDOM

The evolution of the United Kingdom provides an excellent illustration of the growth of a unitary state in which the process of integration has been through absorption and not through

federation. Even in its later expansion as the British Empire, it still exemplifies this unitarianism, for either the Self-Governing Dominions have been granted complete independence or they have not. If they have, then the unitarianism of the United Kingdom is not affected. If they have not, then we have to inquire whether there is any element of federalism in the Empire as a whole. And we shall find that there is no such element. Therefore, in so far as the independence of the Self-Governing Dominions is only partial, it has been granted to them by the Imperial Parliament in the same way as that body has granted certain rights to Local Authorities. Whichever of these two things has happened—*i.e.* whether the Dominions are independent or stand in a subsidiary relation to the United Kingdom—that kingdom remains a unitary state. Any further development in the way of independence on the part of the Dominions may affect the unity of the Empire ; it cannot possibly affect the unitarianism of the British state.

This process of absorption may be watched from the very earliest times. Immediately after the first rush of Teutonic invasions we find in England as many petty kingdoms as there were marauding bands, and as many kings as there were leaders thereof. As the invaders became settlers, the allegiance of the individual was transformed from a personal into a territorial one, and before the actual process of the conquest of Romano-Celtic Britain was completed, already we find the smaller kingdoms being absorbed by the larger. By 613, when, with the fall of Chester, we may consider the conquest to have been complete, there had already emerged out of the original welter, seven kingdoms (the Heptarchy), and the external struggle (with the Britons) immediately gave place to an internal conflict among the seven kingdoms of the invaders. Before long the heptarchy had become a triarchy. Then the Danish invasions supervened, but even this was not sufficient to stop the process of absorption. The Danes settled and were then incorporated, like the rest, into a united kingdom under the kings of the House of Wessex.

The unitarianism of the Kingdom of England was only

strengthened by the Norman Conquest, and the long process which finally resulted in the unification of England, Wales, Scotland, and Ireland now began. Wales was conquered by Edward I, and the Statute of Wales (1283) definitely incorporated that country with its larger neighbour. In 1603, upon the extinction of the Tudor line and the accession of the Stuarts, directly descended from Henry VII, the whole island of Great Britain became united under one crown. But this made no unitary state. It was at best a personal union, exemplified solely in a common kingship. Then in 1707 the Act of Union turned the two states into an absolute unit. The two states made a treaty, but by the treaty each absorbed the other. Their separate identity as states disappeared from that moment. It was not so much a union of the Parliaments of England (which included Wales) and Scotland as the establishment of a new Parliament which included them both. The Act of Union was both a treaty and a statute. The moment it was agreed to by both parliaments the contracting parties ~~existed~~ no longer and therefore it ceased to be a treaty. It remained a valid Act upon the Statute Book of the Kingdom of Great Britain.

A similar absorption took place between the Kingdom of Great Britain and Ireland in 1800. Ireland had been a province under the English Crown, in theory since the days of Henry II in the twelfth century and in fact since the time of Henry VII at the end of the fifteenth. In 1782 Ireland was granted legislative independence, but the machine broke down, and in 1800 the second Act of Union was passed. Here again the two states came together for a moment to make a treaty and then to disappear as separate entities. Hence from 1800 there existed the United Kingdom of Great Britain and Ireland, and in the process of its development there was not the smallest element of federation. Not England nor Scotland nor Ireland retained even a modified sovereignty: that of each was melted in the general mass.

It is true that the special laws of Scotland and Ireland, which in each case existed before the Union, remained in force, but only in so far as they were compatible with the terms of the

Union and only so long as they were not repealed—and this is the important point—by the Parliament of the United Kingdom. It is true, further, that some Acts passed by the united Parliament since that time may specially have excepted Scotland or Ireland from their scope, and others have applied only to each of those countries separately. But any desire that may have existed on the part of the framers of those two Acts of Union to make their provisions unalterable is proved under examination to have been quite illusory, and any attempt that may have been implied to bind future parliaments by these Acts has been proved a failure; for in both, Acts, chiefly with regard to religion, which were intended to be permanent, have been since repealed or amended. The only way, in fact, in which the untouchability of the Acts of Union by the United Parliament could have been secured would have been to maintain a special body for protecting or changing them, but in that case the British Parliament would have ceased to be sovereign and would have become what we have called a subsidiary sovereign body. In short, the United Kingdom would have ceased to be a unitary state and have become a federal state. The United Kingdom modified in 1922 the form in which it had existed since 1800, by the establishment of the Irish Free State. But this Act only cut away a portion of the United Kingdom and left the rest a unitary state under the title, the United Kingdom of Great Britain and Northern Ireland.

The same absence of federalism, therefore, is to be observed in the growth and political organisation of the British Empire. It is impossible to speak of the Constitution of the British Empire. There is no such thing. There is a constitution of the United Kingdom and there are separate constitutions of the Self-Governing Dominions. To bring them all together under one head is merely to assert the ultimate supremacy of the British Parliament over any part of the Empire, and to place every Self-Governing Dominion, with reference to the Imperial Parliament, essentially in the position of a Local Authority within the United Kingdom, since every grant of self-government has been made by an Act of that Parliament

and can (in strict legality) be equally withdrawn by the same authority. If it is objected, as justly it might be, that no British Parliament would now risk the consequences even of a modification of a Dominion Constitution to which the Dominion did not agree, much less of a withdrawal of Dominion Status, the answer is that the tendency to greater independence on the part of the Dominions is one readily recognised by the Imperial Parliament. In other words, by making no attempt to perpetuate a political unity which, if attempted, might lead to a disintegration apparent to all the world, modern British statesmanship assures a moral union.

Each grant of Dominion Home Rule, indeed, has been more in the nature of a treaty than a statute, as we may see in the case of the Irish Free State, whose Constitution was actually founded upon the conditions of a treaty signed between Great Britain and Southern Ireland, and ratified by the Imperial Parliament and an Irish Constituent Assembly. The preamble to the Constitution states that

“if any provision of the said Constitution or any amendment thereof or law made thereunder is in any respect repugnant to any of the provisions of the Scheduled Treaty, it shall, to the extent only of such repugnancy, be absolutely void and inoperative.”

If hereby the Parliament of the Irish Free State binds itself, so does the British Parliament. And what is obvious and explicit in the latest case is only concealed and implicit in the earlier ones. The Dominions become yearly more and more conscious of their nationhood, and with this growth has come, in the cases of Canada, Australia, New Zealand, and South Africa, in fact what we see in the case of Ireland in words.

There were only two possible ways of satisfying the demands of this nationhood. One way was to make the whole Empire a federation in which all the component parts should be equal. The shock of the loss of the American Colonies in 1783 had given rise to what was called the “Ripe Fruit Theory”—that the Colonies, being to the Mother Country as fruit to a tree, when they ripened they were bound to fall away. This theory had recurred constantly afterwards in the minds of certain statesmen and thinkers at every Imperial crisis. By 1870 this

way of solution had reached its climax, and it then gave place to a serious movement for federation which went on in some form or other till the close of the century. The other way was to do what has in fact been done. It was to form an alliance between the component parts of the Empire, which has been kept alive by Imperial Conferences. Notwithstanding this sense of alliance, the Empire is now hardly a diplomatic unit, for each of the Dominions separately signed the Peace Treaties of 1919, each has its own seats in the Assembly of the League of Nations, and each has reserved its right to decide on future diplomatic action. (4)

It follows from what we have said, first, that we cannot discuss the Constitution of the Empire as a whole as that of either a unitary or a federal state, and secondly, that we must discuss each of the Dominions separately either as unitary or federal states. We will here take the cases of New Zealand, South Africa, and the Irish Free State as examples of unitary states within the Empire, reserving for the next chapter the federal states of Canada and Australia.

V.—EXAMPLES OF UNITARY STATES AMONG BRITISH SELF-GOVERNING DOMINIONS

The three examples that we have chosen leave out of account two others—Newfoundland, which has hardly a full Dominion Status, and Southern Rhodesia, the very latest colony to receive Dominion Status (1924), whose destiny, however, appears to be to join the Union of South Africa. Each of the cases of New Zealand, South Africa and the Irish Free State presents an example of a unitary state. (5)

(a) *New Zealand*

The history of New Zealand as a British possession begins in 1840, when it was formally annexed by Great Britain and a treaty was made with the Maoris guaranteeing them in the possession of their lands. A series of Maori wars about land-ownership ended in 1870, since when they have lived in amity

with the whites and had the right of returning four of their own number to the House of Representatives, and it has been customary in more recent years for one Maori to be a member of the Cabinet. Two Acts of the Imperial Parliament established first an elective Legislature (1853) and then a Ministry responsible to it (1856). These Acts did not legally disturb a practice which had been growing up for some years, namely, that a large share of the functions of government was discharged by Provincial Councils, one for each province, of which there were at first six, and later nine. And since the power of amending the Constitution rested entirely (with the normal reservation as to the powers of the Imperial Parliament) with the Legislature, it remained for the Dominion itself to decide whether it would retain the provincial system and develop into a federal state.

As it turned out, the Parliament established by the Act of 1853 and strengthened by the second Act three years later, proved such a centralising force that by 1876 the provincial system had entirely disappeared and New Zealand became definitely a unitary state, its central government recognising no subordinate sovereign bodies. The destiny of New Zealand proved so distinct and separate, and she had gone so far on the way to developing her own institutions, that she found herself unable to join, as was assumed, the Commonwealth of Australia, on its establishment in 1900. The preamble to the Act establishing the latter actually mentions New Zealand as one of the States of the Commonwealth, but by that time the unitarianism of New Zealand was so set as to preclude the practicability of her sinking her individuality and becoming one of the units in a wider federation.

(b) The Irish Free State

The Irish Free State is an interesting example of a unitary state because, while the Irish Free State is a political unit, it is not coterminous with the geographical unit called Ireland. Through the many centuries of Ireland's association with (some, doubtless, would say subjection to) Great Britain, she

had always been thought of as an entity, and all the Bills and Acts of Parliament which had reference to her so regarded her. This, no doubt, was one of the causes of the failure to settle the Irish Question, for it was to fly in the face of the profoundest historical cause of dissension there. This dissension resulted from the basic differences in race, religion, and ideals between Northern Ireland (or Ulster) and the rest. Every attempt made to surmount this perpetual obstacle to the internal peace of the British Isles, broke down in face of the antagonisms of these two parts of the smaller island. The earlier Home Rule Bills, connected with the administrations of Gladstone, never reached the Statute Book, and when at last one did (that of 1912, thanks to the disabling of the Lords by the Parliament Act) in 1914, it was a dead letter owing first to the opposition of Ulster and secondly to the supervention of the War.

Not until the War was over did we recognise the need for regarding Ireland not as one but as two entities, and then it was too late, for the unrest and rebellion of Southern Ireland during and after the War had made mere old-fashioned Home Rule quite unacceptable and manifestly obsolete. None the less, an Act was passed in 1920 which for the first time divided Ireland into two parts. Only Northern Ireland accepted this Act, and under its provisions that part of the country continues to be governed. The only solution that Southern Ireland would accept was that of Dominion Home Rule, and this was granted under the Act of 1922 which established the Irish Free State. The treaty upon which it was founded gave Northern Ireland the right to refuse to enter the Irish Free State and to continue to be governed under the Act of 1920. This, of course, she did. (Thus Ireland presents the strange spectacle of a partition into two parts, one of which is as independent as Canada or Australia, the other enjoying, from its deliberate choice, a mere local autonomy and still sending members to the Imperial Parliament at Westminster.) The Irish Free State is a unitary state, since within its own borders it recognises no subordinate sovereign bodies. It is as distinct from Northern Ireland politically as it is from Great Britain, if not indeed more so. But both the Treaty and the Constitution

assumed at least the hope that the two Irelands would eventually unite. The time for that happy consummation, apparently, is not yet. And when it does arrive, the question will then be, will the two parts integrate into a unitary or into a federal state? (6)

(c) *The Union of South Africa*

The case of South Africa we have left till last here because it offers a somewhat curious example of a unitary state, having in some respects the appearance of a federal form of political organisation. Yet in actuality it has so little of federalism about it that it would be quite wrong to describe it even as a quasi-federal state. The movements and discussions in South Africa which led up to the establishment of the Union might have led one to suppose that a federal system, after the model either of Canada or of Australia, was about to be achieved. And such a federal system was doubtless contemplated by a good many South African statesmen at that time. But the governmental problems arising out of the acuteness of the conflict between nationalities and races there led the convention which drafted the Constitution to write it with a view to strengthening as far as possible the central government, which is, as must be clear by now, far more powerful under a unitary than under a federal system.

Hence the Union of South Africa, though made up of four distinct entities which had, but a short time previously, been in a state of armed strife, is in fact a unitary state with a central government unrestricted by the existence of any subordinate bodies. Each of the four colonies, now called the Cape of Good Hope, Natal, the Transvaal and the Orange Free State, has a Provincial Council whose powers are enumerated in the Constitution, but the enumeration is immediately followed by the statement that

“any ordinance made by a provincial council shall have effect in and for the province as long and as far only as it is not repugnant to any Act of (the Union) Parliament.”

Thus the South Africans followed, after all, not the precedent of the Canadians or Australians, but that of the English and

Scots in 1707. The appearance of federalism is to some extent maintained in the Senate where there are eight members from each province, as well as eight for the whole Union nominated by the Governor-General in Council, but they by no means personify the province, as, for example, do the Senators the State in U.S.A. The provinces are, in fact, for this purpose merely constituencies.

Since the Great War several complications have been introduced into the politics of the southern half of Africa. For example, the mandate for the former German South-West Africa, originally allocated to Britain, has been taken over by the Union, and it will be interesting to watch the growth of self-government there. Again, in 1924 the people of Southern Rhodesia, which up to then had been administered by a Chartered Company, voted by Referendum on the question whether, since the power of the Company had come to an end, they should join the Union of South Africa or have Dominion Status—*i.e.* Responsible Government—in isolation. They chose the latter. If they had decided to join the Union an interesting problem would have been raised (and will, presumably, one day be raised). If a fifth province were to be added, either the South Africans must follow the precedent of the Act of Union with Ireland of 1800, as they first followed that with Scotland in 1707, in which case the political individuality of Southern Rhodesia would be completely sunk in a unitary state, or a federation must be formed, in which case a process of devolution (*i.e.* breaking-up) of the Union must take place first, and it will be interesting to observe what lines it will follow; whether the Union will fall back into its pristine divisions or some new ones be found before the new union takes place. (7)

VI.—THE UNITARY STATE OF FRANCE

✓ A unitary state is a type of political organisation deeply rooted among the French, both in history and sentiment. From the very earliest days of the French Monarchy, it was the policy of the king, whose territorial power was at first very slight compared with that of some of his barons who were his

feudal inferiors, to conquer and absorb the territories not actually possessed by him; to undo, in fact, the work of feudalism. This process went on until the baronage became politically quite impotent and Louis XIV could, without much hyperbole, say, "The State, it is I." All the political power being centred in the Crown, we may judge of the cataclysmic effect of the Revolution which swept it away. There were no strong local bodies to form the foundations of the new state. The sole corporation was the nation. The Revolution left nothing but a tradition of centralism and a philosophy which emphasised individual rights and the sovereignty of the people. This tradition and this philosophy have never been lost, and their prevalence accounts for the fact that, as a French writer puts it, "all French political systems always gravitate automatically and rapidly towards unity and homogeneity of powers."

✓ Though the organisation of the present Republic, with its emphasis on parliament, has obscured the sovereignty of the people and has discontinued the use of the plebiscite (or popular vote) for presidential election—a practice very common in revolutionary times—it has not decentralised the French state. It remains the most perfect example of political unitarianism. All the powers of government reside in the legislative and executive organs at Paris. There are no subsidiary sovereign bodies. France is divided into *départements* and *communes*, *arrondissements*, and cantons (the last two being merely electoral areas). But their form and extent depend entirely upon statute law. There is no local authority and no territorial division that the central government could not obliterate whenever it chose. The powers of all local officers are defined by national law and they are supervised in their actions by an envoy of the central government called a prefect. ✓

That there is in some quarters a sense of the oppressiveness of this high centralism is proved by the fact that there is a movement there called Regionalism whose object is to break France up into local units and to give them a real measure of local autonomy in order to relieve the central government of

some of its functions. But amid the welter of problems which have pressed upon the governments of post-war France this movement has had little opportunity to make any official headway.

VII.—THE CASES OF ITALY AND JUGO-SLAVIA

Both Italy and Jugo-Slavia supply interesting examples of unitary states which might, under another dispensation, very well have become federations. To trace the history of unification in each of these cases is to see very clearly how the two processes of unitarianism and federalism may be effected. The unification of Italy belongs to the period 1848-1870, and that of Jugo-Slavia to the period which saw the end of the War

(i) *Italy*

The story of the struggle for an independent and united Italy is, in one sense, as old as Theodoric the Ostrogoth (493-526), in another, as new as Signor Mussolini. The former, the first to make a serious attempt at unification since the breaking up of the Roman Empire in the West, brought his policy nearer to a successful issue than any was to reach until the days of Cavour in the middle of the nineteenth century. Signor Mussolini bases his programme upon a platform of nationalism which shall overcome all the disintegrating forces following in the wake of the Great War. Italy gained neither her independence nor her unity through all the years that intervened between the fall of the Roman Empire in the West and the rise of the Italian patriots of the nineteenth century—Mazzini, Cavour, Garibaldi, and King Victor Emmanuel—to all of whom she owed something at the last. She gained nothing from the fall of Napoleon in 1815, and for some years after she was still called by Metternich, her most notable oppressor, “a geographical expression.” In 1848 the rulers of seven of the eight states of Italy were driven to grant constitutions to their people, but in the bitter reaction against the Revolution which followed, Sardinia alone precariously

maintained hers, while all the others were crushed out of existence beneath the iron heel of a recuperated Austria.

The Sardinian Constitution (the *Statuto*) of 1848 is the Constitution of Italy to-day, and this very fact proves the unitarianism of the state of Italy. In 1859 the Sardinians, allied with France, drove the Austrians out of Lombardy, which was then united to Sardinia. In the following year Tuscany and the Duchies of the centre declared for union with the North and were incorporated. Meanwhile, Garibaldi was liberating Sicily and Naples from the tyrannical Bourbon dynasty, and in 1861 the South united with the North, and the first Italian parliament was held. There still remained Venice and the Papal States outside the united kingdom. The former was secured as a result of the Austro-Prussian War of 1866, and the latter by the withdrawal of the French garrison from Rome under pressure of the Franco-Prussian War in 1870. Unification was now complete except for the two areas of Trieste and its environs and the Trentino which, called by the Italians "Italia Irredenta," remained in Austrian hands until the last War, Italy's victory in which freed them and added them to the Kingdom of Italy.

Now, this gradual process of unification might very well have taken the form of federation, each area retaining certain rights and surrendering others for the common advantage to a federal authority. Indeed, many Italians, including Cavour, at one time contemplated the establishment of a federation, and some writers have since held that, in view of the great divergence of history and conditions among the various parts of Italy, the history of the state since its unification would, under such a system, have been much less chequered than has been the case. Instead of that, as the Kingdom of Sardinia expanded into the Kingdom of Italy, the *Statuto* was extended to the new territories. The Italians might have followed a procedure like that adopted by the United States and Canada in their westward expansions, adding new states to the federation as growth demanded. Instead, they followed the precedent of the Acts of Union in Britain, the various parts being absorbed into a unity rather than federated in a union.

(ii) Jugo-Slavia

Jugo-Slavia was more strictly called the Kingdom of the the Serbs, Croats, and Slovenes until 1929, when, in connection with certain reforms carried by royal edict, the former designation was officially adopted. Pre-War Servia, like pre-War Italy, had what it regarded as its unredeemed area outside its political boundaries, but the argument was not so real as in the case of Italy; because it would be difficult to describe the Serbs and those they have now incorporated as of the same nationality, though to say merely that they are of the same race would be perhaps too loose an expression. The present state of Jugo-Slavia is composed of a most heterogeneous population, most of whom are Serbs, Croats, and Slovenes, but these in the most divergent proportions. The Kingdom includes the former kingdoms of Serbia and Montenegro, and the districts of Bosnia, Herzegovina, Croatia, Dalmatia, Slavonia which formerly belonged to Austria-Hungary, and a western strip of pre-War Bulgaria. Such a confusion of areas and peoples could hardly hope to form a strong united state, yet that is what was attempted. If ever a situation, preceding the establishment of a new state, cried out for the trial of a federal experiment, this one did. Yet a unitarian system was decided on.

In their haste, certain politicians precipitated events before the War was over. In July, 1917, a quite unrepresentative body of Serbs and Jugo-Slavs met and signed the Pact of Corfu, adopting the following resolution :

“ The territory of the Serbs, Croats, and Slovenes will comprise all the territory where our nation lives in compact masses and without discontinuity, and where it could not be mutilated without injuring the vital interests of the community. It desires to free itself and establish its unity.”

And to show that they meant by this a unitary state they passed a further resolution in the following words :

“ The Kingdom of the Serbs, Croats and Slovenes shall be a democratic, constitutional, and parliamentary monarchy whose three co-national parts shall have a single allegiance.”

As a result, a unitary state has been established, but, consisting as it does of most dissatisfied elements, it has never been happy and still threatens to disintegrate. If a true federation can be formed only by the free desire of the federating units, the lack of such a desire cannot be overcome by the establishment of a unitary state which obliterates all outlets of local feeling. It is from such a suppression that Jugo-Slavia is now suffering. How federalism might have helped her to combat her present discontents, a study of certain federal states, which we will now undertake, may help us to appreciate.

READING

- BOWMAN : *The New World*, Chs. v and xiv.
 BRYCE : *History of Jurisprudence*, Vol. II, Essay x. *Modern Democracies*, Vol. I, Ch. xviii ; Vol. II, Ch. liii.
 DICEY : *Law of the Constitution*, Ch. I.
 JENKS : *British Empire*, Ch. iii.
 KEITH : *Constitution, Administration, and Laws of the Empire*, Pt. I, Chs. i-viii. *Responsible Government in Dominions*, Vol. II, Pt. VIII, Chs. ii and iii.
 LASKI : *Grammar of Politics*, Pt. I, Ch. ii.
 LOWELL : *Government of England*, Vol. II, Chs. liv, lv, lviii. *Government and Parties in Continental Europe*, Vol. I, pp. 36-42, 146-150. *Greater European Governments*, pp. 84-86, 95-105, Chs. vi-viii.
 MACIVER : *Modern State*, Chs. v-xi.
 MARRIOTT : *Mechanism of Modern State*, Vol. I, Chs. vi-xii.
 NEWTON : *Federal and United Constitutions*, Introduction and pp. 56-66, 139-155, 359-407.
 WILLIAMSON : *Short History of British Expansion*, pp. 537-573, 617-634.
 WILSON : *State*, pp. 129-149, 256-8, 421-5.

BOOKS FOR FURTHER STUDY

- BOUTMY : *Studies in Constitutional Law*.
 HALL : *British Commonwealth of Nations*.
 KEITH : *Sovereignty of British Dominions*.
 STILLMAN : *Union of Italy*.

SUBJECTS FOR ESSAYS

1. What do you understand by the term Sovereignty? Explain the difference between internal and external sovereignty.
2. Discuss the two processes of integration in the evolution of the modern state.
3. Define the term Supremacy of Parliament and show to what extent this supremacy exists in a unitary state.
4. Trace the growth of unitarianism in the history of Great Britain.

5. Demonstrate the truth of the statement that even the Imperial growth of Britain has not destroyed the unitary character of the British state.

6. Examine the Union of South Africa as an example of a unitary state.

7. Compare the unitary character of New Zealand with that of the Irish Free State.

8. What justification is there for describing the French Republic as the most perfect example of a unitary state in the world to-day?

9. Trace the development of Italian unification and show how Italy might equally have become a federal state.

10. In what circumstances did the Kingdom of the Serbs, Croats, and Slovenes come into existence? Do you consider that the unitary form is best for the welfare of Jugo-Slavia?

CHAPTER V

THE FEDERAL STATE

I.—THE ESSENTIAL CHARACTER OF A FEDERAL STATE

THE importance of federalism to the student of political constitutionalism cannot be over-emphasised. 'Federalism, in some form or other, has its roots in the remote past, for it was not unknown among the City-States of Ancient Greece.' We find it again in the Middle Ages among some of the cities of Italy, and, indeed, since the thirteenth century its history has been continuous in the development of the Swiss Confederation, which was born when the three Forest Cantons banded themselves together for protection in 1291. It is the basis of the political organisation of some of the foremost states of to-day—states as divergent in situation and tradition as Germany and the United States, Mexico and Australia—and, if the world is moving towards the organisation of a universal state out of the international anarchy which we have hitherto known, it is pretty certain that it is on federal lines that this will be achieved. A political experiment with an influence so profound and widespread, certainly in the past and present, and possibly in the future, cannot fail to claim the careful scrutiny of the serious citizen or to repay the closest study.

✓Federalism varies in form from place to place, and from time to time. 'In its loosest form it is a ^{collection of} congeries of states which, in fact, do not make a state at all. History is full of examples of this type of loose league which, for the want of a better term, we generally call a confederation.✓ To go no farther back, we may take the Germanic Confederation, established in 1815 on the fall of Napoleon, as an example of this type of league. ✓There are two German words which in

their compounding help us to grasp the difference between a so-called confederation and a true federation—*Staat*, meaning state, and *Bund*, meaning league. The Germanic Confederation, as it existed from 1815 to 1866, was always spoken of by the Germans as the *Bund*, and the Diet at Frankfort, which was its only central organ, was, in effect, nothing more than an assembly of ambassadors of the various states of the league. Such a league of states the Germans called a *Staatenbund*, where the emphasis is laid on the plurality of states. In such a case there is little to distinguish the organisation from a close alliance. The internal sovereignty of each state remains quite unimpaired and its external sovereignty is limited only to a very small extent.

A *Staatenbund* has not, as a rule, proved for long satisfactory to its members, which have, in the course of time, either returned to their former isolation or knit themselves more closely together into a real union. This real union the Germans call a *Bundesstaat*, in which, it will be observed, the word *Staat* becomes singular. It is, in fact, not a federation of states (*Staatenbund*), but a federal state (*Bundesstaat*). Such an organisation is based upon, first a treaty among the federating units, and then upon a federal constitution accepted directly or indirectly by their citizens. It differs essentially from a confederation in having a central (or federal) executive with real power over all the citizens within the area concerned. It is not a mere league of states (which does not make a state at all) but a union of people over whom the central power will have a certain amount of direct authority. It follows, therefore, that a true federal state requires for its formation two conditions, the absence of either of which would be sufficient to prevent the consummation of such a union. The first condition is a sense of nationality among the units federating. So true is this that we generally find that modern federal states have, prior to their federation, been either loosely connected as a confederation, as in the case of Germany, or subjected to a common sovereign, as in the case of the United States, Switzerland (where both phenomena existed), Australia and Canada. The second condition is that the federating units, though

desiring union, do not desire unity, for if they desired the latter they would form, not a federal, but a unitary state.

✓ It is obvious, therefore, that a federal constitution attempts to reconcile the apparently irreconcilable claims of national sovereignty and state sovereignty. ✓ And the main lines upon which this reconciliation shall take place are sufficiently clear, though, as we shall show, they vary very much in detail from one federal constitution to another. ✓ Whatever concerns the nation as a whole is placed in the care of the national or federal authority: whatever concerns the states individually, and is not of vital moment to the common interest, is placed under the control of the government of the states. This division of powers, however it may, in the various federations of the modern world, be carried out in detail, is the essential characteristic of the federal state. ✓

II.—VARIATIONS OF THE FEDERAL TYPE

~ The indispensable quality of the federal state being a distribution of the powers of government between the federal authority and the federating units, we note three ways in which federal states may vary one from another; first, as to the manner in which the powers are distributed between the federal and state authorities; secondly, as to the nature of the authority for preserving the supremacy of the constitution over the federal and state authorities if they should come into conflict with one another; and thirdly, as to the means of changing the constitution if such change should be desired. ✓

~ The powers may be distributed in one of two ways. Either the constitution states what powers the federal authority shall have and leaves the remainder to the federating units, or it states what powers the federating units shall possess and leaves the remainder to the federal authority. This remainder is generally called the "reserve of powers." The object of stating the powers is to define and hence to limit them. Therefore, it may be taken for granted that where the federal constitution defines the powers of the federating units, as in the case of the Dominion of Canada, the aim is to strengthen the federal

authority at the expense of the separate members of the federation. So true is this in the case of Canada that the federating units are called not states but provinces. Thus, where the "reserve of powers" is with the federal authority the constitution approaches more to that of a unitary state than if it is with the states. In other words, such a state is less federal.

Where the constitution defines the powers of the federal authority, as in the case of the United States and the Commonwealth of Australia, the object is to check the power of the federal authority as against the federating units. Such federating units wish to retain as much of their independence as is consistent with the safety of the federation. They want a federal state with a real power, through which they can express their common nationality, but they want, at the same time, to maintain their individual character as states as far as possible. The more they maintain that individual character, the more they will wish to define the federal powers and the greater the "reserve of powers" they will wish to keep for themselves. Hence, the greater the "reserve of powers" with the states, the more markedly federal is the state whose constitution permits such reserve to them. In other words, the federal state whose constitution defines the powers of the federal authority is less centralised than the one whose constitution defines the powers of the federating units.

The division of powers, by whichever of the two ways it is carried into effect, implies that both the legislature of the federation and that of each of the federating units are limited in their scope and that neither of these is supreme. There is something above them both, namely, the constitution, which is a definite contract—a treaty in which the contracting parties reduce the conditions of their union to writing. (A federal constitution is, in fact, a charter of rights and duties of the federal and state authorities. These rights and duties must be kept in their proper proportions; the rights asserted by any one authority, and the duties required of one authority by another, must not be beyond the schedule laid down in the constitution.) In the truly federal state the power to maintain this equilibrium is granted to a supreme court of judges whose

concern is to see that the constitution is respected in so far as it distributes governmental powers between the contracting parties and the federal authority which by their contract they establish.

✓ In the amount of authority given to such a court federal states vary. In the completely federalised state, of which the United States is the most perfect example, this court is absolutely supreme in its power to decide in cases of conflict between the federal authority and the state authorities. In other cases the powers of the court are limited by rights in this respect granted to other authorities. Of such a limitation upon the powers of the supreme judiciary in a federal state, Switzerland affords the best example. ✓ For here not the Federal Court but the Federal Assembly is the final arbiter on all conflicts between state and federal authority, and the Federal Court cannot question the constitutionality of acts passed by the Federal Assembly. But in this case, as we shall show in a later chapter, such a power in the hands of the federal court would be superfluous, since the sovereign people has in Switzerland a very direct means of expressing its will.

Between these two extremes lie several examples of variation in the matter of deciding conflicts between federal and state authorities. Australia is nearest to the absolute case of the United States, the difference being that there are, in the Australian Constitution, certain clauses which may be altered by the Commonwealth Parliament without reference to any other authority, and in such cases, of course, there can be no question of infringing the rights of states. In the new German Federal Republic the Supreme Federal Court is called upon to settle disputes between state and federation or between the states themselves, only in certain cases. In Canada questions of conflict only occasionally arise, owing to the fact that the powers of the states (*i.e.* in this case, provinces) are comparatively slight. But where the federal government in Canada should attempt to infringe these provincial rights, the supreme court in Canada would inevitably become the arbiter between the two authorities.

Thus in all federal states there prevails a certain legalism

which is not present in unitary states. And this fact gives rise to the question of how the constitution is to be changed. We shall say more of this later. Here suffice it to observe that a federal constitution is necessarily documentary in form, for it is inconceivable that forces so nicely balanced could be left to the tender mercies of mere custom for their maintenance. Hence a federal constitution is rigid; that is to say, the conditions under which such a constitution may be changed are either explicit or implied. If they are explicit, that is, if the conditions of amendment are definitely laid down, then, clearly, it is rigid. If they are not expressed, then the rigidity of the constitution is implied, for either the constitution is unchangeable by legal means—*i.e.* its alteration would involve a revolution—or else the only way to change it is for *all* the original contracting parties to agree to the change—in which case they, in effect, sign a new treaty and promulgate to that extent a new constitution.

As to the details of the methods of altering federal constitutions, we shall reserve this question for a later chapter on the rigid constitution. The remainder of this chapter will be occupied in examining the most important examples of federal states in the world of to-day.

III.—THE FEDERAL SYSTEM IN THE UNITED STATES OF AMERICA

The Constitution of the United States is the most completely federal constitution in the world. By this is meant that it exemplifies in the most marked degree the three essential characteristics of federalism, namely, the supremacy of the constitution, the distribution of powers, and the authority of the judiciary. It reached this stage of exactitude by two steps from a condition in which the original thirteen federating states bore a common allegiance to Britain. The first step was taken with the adoption of the Articles of Confederation in 1781, which constituted not a true federation, but a confederation, a loose league, “a rope of sand,” as Woodrow Wilson calls these Articles, “which could bind no one.” The next step was

taken in 1787 when a Convention at Philadelphia drew up the present Constitution which was adopted by the Thirteen States in 1789. Now, this made a true federation because it established a central executive with very definite powers. And it made the state as a whole as federal as possible, that is to say, it made it as little unitary as it dared, having regard to the need of a strong federal government, as proved by the difficulties with which the Confederation had helplessly struggled to cope during the space of more than a decade.

As to the division of powers, the Constitution of the United States makes a double division; first it divides the three departments of government—*i.e.* legislative, executive, judicial—and makes them quite distinct from one another. As to this we shall have something to say later on. Secondly, it divides the powers between the federal and state authorities in such a manner as to secure to the federating units all the powers not absolutely necessary to the federal authority for the common advantage. Thus the powers of the United States as a whole are strictly defined, the powers left to the states separately are undefined. In other words, the Constitution enumerates in a precise list what powers the federal authority is to exercise, adding a list of powers forbidden to the United States and a list of powers forbidden to the states. And so that there should be no loophole for abuse, the 10th Amendment (carried in 1791, so near to the original promulgation as to be, in effect, a part of it) states that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." The net result is that the Federal or National Government of the United States can claim no power not conferred upon it by the Constitution, while the states can exercise any power belonging to an independent sovereign state except those of which they have been directly or indirectly deprived by the Constitution.

As to the Legislative Department, the Constitution establishes a Congress of two Houses—the Senate and House of Representatives—in the upper of which it secures the equality of all states and makes this an immutable law. As to the Executive Department, it establishes a four-year Presidency

and details the method of election to this office. It enumerates the President's powers and checks his diplomatic powers (treaty-making, appointment of ambassadors, etc.) by requiring for the exercise thereof the ratification of the Senate. So that the external sovereignty which the states have surrendered is still ultimately controlled by the House in which they are equally represented. As to the Judicial Department, the Constitution establishes federal courts whose jurisdiction extends to all cases arising out of the Constitution, including all those of an international character whether between the states of the United States or between the United States and any other state in the world. It also establishes a Supreme Court which is a final court of appeal for all the cases already mentioned. This makes it the ultimate interpreter of the Constitution, and places the Judicial Department above any legislature (within the limits of the Constitution) whether federal or state.

This Constitution, therefore, leaves a vast amount of power with the states which form the federation. Woodrow Wilson points out that of a dozen great legislative schemes carried through by the British Parliament in the nineteenth century only two would have come within the scope of federal legislation in America. He takes Catholic emancipation, parliamentary reform, the abolition of slavery, the amendment of the Poor Law, municipal reform, the repeal of the Corn Laws, the admission of Jews to Parliament, the disestablishment of the Irish Church, the alteration of the Irish Land Laws, the establishment of national education, the introduction of the ballot, and the reform of the Criminal Law. Of these, he says, only the Corn Laws and Slavery would have been subjects for federal regulation, and even of these two the second was outside the scope of federal action until the amendment following the Civil War (1861-5) took it out of the hands of the states. These, surely, are very striking facts for the observer accustomed, as Englishmen are, to the supremacy of the central legislature. In America, indeed, the Federal Constitution is meaningless unless taken in conjunction with the State Constitutions, which are not merely useful additions thereto, but the indispensable complement of it.

A further illustration of the absolute power of the states concerning all the things not mentioned in the Constitution as belonging to the federal authority is seen in the fact that there is no appeal to the Supreme Court of the United States in any such matters. A modern example will prove the point. A teacher in the state of Tennessee was recently indicted for teaching the theory of evolution in a school, an act which was a breach of the state law. It was suggested at the time that, in this case, in which not merely local interests were concerned but the passions of the whole nation were ardently concentrated, an effort would be made to bring the case to the Supreme Court. But such an effort could not possibly be successful. There was no way of bringing such a case into the Federal Court (short of a constitutional amendment in that direction) for the excellent reason that education is not mentioned in the Constitution and is, therefore, a matter reserved completely to the state authority.

In spite of the security thus afforded to the states by the Constitution, it cannot be denied that since the foundation of the United States of America there has been a progressive strengthening of the Federal as against the State Government not only through constitutional amendment, but through the various judgments interpreting the Constitution in the Federal Supreme Court. Particularly it has been shown to be quite impossible for any state to secede from the federation. It took the most terrible—because the most fratricidal—war of modern times to demonstrate this fact beyond all controversy. The Civil War (1861-5) resulted from the attempt of seven Southern States (afterwards increased to eleven) to break away from the American Union and to establish a Confederacy of their own. So far as President Lincoln was concerned, the war was fought not primarily to abolish slavery—though the slavery question was the occasion of it, and the abolition of slavery was achieved by it—but to vindicate the principle of union. In doing this Abraham Lincoln appealed to the spirit of nationalism of the American people. Morally, he held that it was impossible for a nation to endure if it permitted within its borders at the same time the diametrically opposed principles of liberty and slavery. And, politically, he held that the Union was perpetual.

"It is safe to assert," he said, "that no government proper ever had a provision in its organic law for its own termination."

The triumph of the North in the Civil War preserved and strengthened the Union. No single state in the United States to-day could possibly contemplate secession. How could one alone hope to succeed where eleven in combination formerly so signally failed? The War of Secession, in fact though not in appearance, modified in the profoundest manner the nature of the American Constitution. It did not, indeed, create a unitary state, but it proved that, at last analysis, the American Union is as secure from disruption as any unitary state could be. Perhaps more so, for it is the peculiar achievement of the United States that they have perceived how to obtain all the advantages of common action among almost half-a-hundred states without denying to them all those powers fully necessary to their political and social well-being. In short, they have shown the world how to obtain peace through political organisation.

IV.—THE SWISS CONFEDERATION

In the Swiss Confederation we have the oldest of existing federal states. In spite of its name, it is now a true federation and not a confederation, if by the latter we mean a loose league of states without a strong central power. But it was not always so. Founded in the successful struggle of three districts—the Forest Cantons—against the overlordship of Austria in the thirteenth century, it expanded to thirteen states, the number existing in the Confederation when it was recognised as independent and sovereign by the Treaty of Westphalia in 1648. At this time it was a loose league of states with no strong central power, and so it remained as it continued its chequered career through the storms and confusions of the French Revolution and Napoleonic Europe. Even in the general settlement of 1815 it did not find its final basis of stability. It was still too loose, as was shown in a short civil war begun in 1847 by seven Roman Catholic cantons (the *Sonderbund*, as they were

called) which, like the Southern Confederacy in the United States in 1861, attempted to secede from the general body. Revision of the Constitution immediately followed the defeat of the seceding cantons, and the Constitution of 1848 transformed the old Confederation (*Staatenbund*) into a federal state (*Bundesstaat*). The Constitution of 1848 was radically revised in 1874, and the Constitution of that year, subsequently amended in certain features, is the one under which Switzerland is governed to-day.

In some respects the Swiss Confederation affords an even more striking example than the United States of how conflicting state interests can be overcome, without annihilating state identity, by the political device called federalism. Switzerland mocks all attempts to define nationality, for, though the Swiss form a nation, with a solidarity which has resisted through the space of more than six centuries the multifarious attempts which have been made to undermine it, they have always lacked and still lack a common religion and a common language, while even their mountains do not form a ring which would make a natural boundary. Nearly two-thirds of the population speak German, most of the rest speak French, and the remainder Italian (or else a dialect called Romansch). These language differences are officially recognised in the Federal Legislature where a member may speak in German, French, or Italian. Not only this, but in their history the cantons showed an amazing diversity of political institutions, ranging from the most advanced democracy to the most reactionary aristocracy. While, now, these variations have been abolished and all the cantons of Switzerland conform to some type of democracy, the ardent patriotism which breathed life into the Confederation and maintains it in health and strength, has not destroyed that attachment to local self-government without which the federation, as it is to-day, would not be. Indeed, the modern federal system has been built rather out of cantonal habit and experience than by the application of principles derived from constitutional theories or foreign examples.

Nevertheless, the resemblance in some broad aspects between the Swiss and American systems is due to conscious

imitation on the part of the reformers of 1848 and 1874, though it was far from their purpose to Americanise their institutions, and the Swiss Confederation remains, in several particulars, distinctive. The Constitution, for example, speaks of the Swiss "nation," a word unknown to the American Constitution, but, at the same time, it divides the powers in such a way as to leave the "reserve" with the cantons. Yet it shows at some points both an incomplete nationalisation and an incomplete federation. For, on the one hand, Article 3 of the Constitution asserts that "the cantons are sovereign in so far as their sovereignty is not limited by the Federal Constitution, and, this being the case, exercise all rights not delegated to the federal power." In proportion as this article divides the sovereignty it decreases the national unity. On the other hand, Articles 5 and 6 make cantonal constitutions dependent upon a guarantee of the federal power, and so they are not so secure as are the state constitutions in the United States. In proportion as the cantonal constitutions depend upon the federal authority rather than upon the Constitution itself, interpreted by a Supreme Court of Judges, as in the United States of America, the state as a whole is less federalised.

But there is a security for rights, both national and state, in Switzerland, which does not exist, at any rate to anything like the same extent, in the United States—namely, the Referendum. We shall speak of this more fully later on. Here it is only necessary to notice that, while Article 6 of the Swiss Constitution requires the guarantee of the federal authority for cantonal constitutions, it adds that this guarantee must be given if the people of the canton accept the Constitution. Moreover, ratification of amendments cannot be withheld provided a majority of the people demand them. A further loosening of the unity of the states is manifested in the Upper House of the Confederation, called the Council of States (*Ständerat*). While, like the Senate of the United States, it has two members from each canton (forty-four members altogether), the Constitution, unlike the American, leaves every detail of their selection and period of service absolutely to the cantons, whereas in the United States (by an Amendment of

1913) the Constitution lays down a uniform method for the popular election of senators.

The Federal Executive in Switzerland is of a special kind, which we shall examine in a later chapter. As to the judiciary, members of a supreme court of judges are elected for six years by the two houses of the legislature sitting together as one tribunal. But they may be, and often are, re-elected. This supreme court, however, has no powers of interpreting the Constitution comparable to those of the Supreme Court in the United States, for the Swiss Court cannot declare any federal law invalid as infringing some provision of the Federal Constitution. That power is expressly left to the legislature which passes the law. But the Supreme Court does decide in cases of conflict between cantons, and it is the court of final appeal in all cases.

✓ To summarise, we may say that, in the Swiss Confederation, the powers are divided so that the "reserve of powers" is left with the cantons; the Constitution is supreme, but it is left open at every point to an absolute democratic check by the instruments of the referendum and the popular initiative; and finally the judiciary has no power of interpreting the Constitution. ~

V.—THE COMMONWEALTH OF AUSTRALIA

Of the two great federal systems under the British Crown—the Dominion of Canada and the Commonwealth of Australia—the former, though much older, is much less federalised than the latter. Since Australia is the more completely federal, we will deal with it first. The Australian Constitution exhibits that quality common, as we have already observed, to all the Self-Governing Dominions of the British Commonwealth—namely, that it is founded upon an Imperial Statute and that, speaking in a purely legal sense, it could be altered or abolished by the same authority. But remove this theoretical consideration and you are able to judge the Australian Constitution as that of an independent federal state just as you may those of the United States and Switzerland.

In the Australian Constitution are present all the characteristic features of federalism—the distribution of powers among bodies of limited and co-ordinate authority, the supremacy of the Constitution, and the authority of the courts to interpret the Constitution. In all these essential features the Australian Commonwealth much more closely resembles the United States than does the Canadian Dominion, and for this resemblance in the one case and lack of it in the other there are historical causes of the profoundest importance. Australia supplies the only example in which a political constitution has been framed for a whole continent, and this is because it is the only case of a continent all of whose inhabitants are of one race. Consider the shortness of its life—the first settlement at Botany Bay was not made till 1788—and then ponder the rapidity with which it progressed to the position of the most advanced democracy in the world, through an instrument of government fashioned only a quarter of a century ago. . . .

The peculiar circumstances in which the separate colonies were founded and their national homogeneity made their common allegiance easy enough to observe, first to the Mother Country and then to the federal Constitution of 1900. But this Constitution was to apply to an area only slightly less than that of Europe and to provide for the political destinies of a population even now less than that of London. Such physical facts—the vast area which the colonies covered and the awful distances which separated them in a land whose communications were as yet ill-developed—had tended inevitably to isolation and to the growth of local feeling which required the most delicate handling. This gives the key to the particular form of federalism which was adopted. The six colonies which federated would not have done so except under the dread of danger from imperialising Powers in the Pacific, a danger not apparent until the closing years of the last century. The concern of these colonies was, therefore, much less to found a strongly centralised state than to find the means of forming a union which should deprive the federating bodies of as little of their individual power as was consistent with the end in view.

At the same time there was a general feeling that an authority

with wider powers than any existing before the federation was necessary for industrial and social development, and that a supreme judicial authority ought to be established to avoid the expense and delay involved in carrying cases to the Privy Council in London. So that, in the result, the federation became something more than a league for common defence and has proved itself an efficient instrument for the furtherance of that social legislation in which the Australasian colonists ardently believe.

The Constitution states the powers of the Commonwealth Government and leaves the rest to the states. The list of powers enumerated is a wide one, but it still leaves a large area of freedom to the states. The Constitution establishes a Federal Executive—nominally the Governor-General in Council, but actually responsible to the federal legislature which consists of two Houses, namely, the Senate and the House of Representatives. In the Senate the states are equally represented (six from each) in the House on a population basis. The Constitution allows the states to make what arrangements they like for election to Parliament (Articles 9 and 29), but these provisions are among a number which the federal legislature may change without constitutional amendment; and the existing arrangement by federal law is that the House of Representatives shall be elected throughout the Commonwealth in one-member constituencies, while the Senators shall be elected in each state, the whole state being the electoral division, but both under a system of preferential voting which will be explained later.

Further, the Constitution establishes a Federal Judiciary with a supreme court which has power to interpret the Constitution, as in the United States, and to deal with all cases of conflict between the states or between any of the states and the Federal Authority. The Supreme Court in Australia differs from that in the United States in that, while the United States Supreme Court cannot entertain appeals from states on pure state law, the Australian Supreme Court can and does.

The Australian Commonwealth being, as we have shown, a truly federal system, the states have a very real existence of

their own. They are, as we have said, equally represented in the Senate, and they each have a Governor, not appointed by the Federal Authority, as in Canada, nor elected by the people, as in the United States, but appointed directly by the Crown, i.e. in practice by the home Government with the concurrence of the existing Government of the state. The Constitution allows a state, if it wishes, to seek the aid of the Federal Parliament in legislating for pure state matters and further allows the Federal Authority to take over all or part of a state's debts. Such provisions as these imply a closer connection between federal and state authority than obtains in the United States.(8)

Finally, the Constitution arranged for a federal district in which eventually the Federal Government was to have its home, independent of any state. The area, called Canberra and covering about 900 square miles, was ceded by New South Wales to the Commonwealth. It is about equidistant from Sydney and Melbourne and the Federal Government was installed there in 1928.

VI.—THE MODIFIED FEDERALISM OF THE DOMINION OF CANADA

The Dominion of Canada is less federal than any of the three examples we have so far examined, for while in the case of the United States, of Switzerland, and of Australia, the "reserve of powers" is with the states, in Canada the reverse is the case. It is for this reason that we have spoken of Canada as a modified example of a federal state. In fact, the federated units in Canada are not states in any real sense. They are called provinces, though they are far more powerful than local authorities in England, or than the four provinces of the Union of South Africa. Though the Dominion of Canada is not a fully federalised state, it is something very different from a unitary state like Great Britain, France, or New Zealand. But there are most important differences, which must be noticed, between the federalism of Canada and that of the other states noticed in this chapter.

Though not the oldest of British Colonies—an honour which

belongs to Newfoundland—Canada is the oldest of the British Self-Governing Dominions strictly so called, for she was the first to receive Dominion Status, that is to say, Responsible Self-Government, and its general adoption in later years has been inspired by her successful use of it. We shall deal with this question of Responsible Government later. Here we have to note the federal system in Canada which is quite distinct from the principle of Responsible Government. But here, again, Canada had a long lead of Australia, for her federal system was founded by the British North America Act of 1867. Consisting originally of four provinces—Ontario, Quebec, Nova Scotia, and New Brunswick—the federation soon extended to include seven and now consists of nine. The ground on which the Dominion was built was quite different from that in the case of the Commonwealth of Australia.) The incentive to union was much more internal than external, but there was both an internal and an external reason for the particular form which Canadian federalism assumed. Unlike Australia but like South Africa, Canada was torn by a conflict of nationalities, French and British, and the causes of their mutual animosity were of long standing. A strong central government was an urgent need, and yet a united state had been tried and had failed after the Act of 1840. (A further difficulty was that this Act had applied only to Quebec and Ontario, whereas now there was a desire on the part of two or even three others to come into a common scheme of government with the first two. A loose league—a mere confederation—between these provinces would have been worse than useless : it would have solved nothing. A unitary state, on the other hand, was not likely to prove workable. Neither the one nor the other fitted the situation in view of the added fact that vast areas of Canada were as yet unopened. On the one hand, a loose confederation would inevitably have left free an avenue to later conflict. On the other, a unitary system—even if it could have been made to apply to the existing political units, which it could not—suited though it might be to fully developed bodies politic, might prove unfitted for those as yet unborn.

Why, then, did not Canada make a federation of the U.S.A

type? The answer is to be found in the date at which a federal union was being seriously discussed in Canada, viz. 1864-1867. The Civil War in America (1861-5) had caused many, especially the Canadians who were such close observers of it, to despair of federalism, as it had so far worked itself out in the United States. *Federalism had apparently broken down. Under the conviction that it had, the leading Canadian statesmen found a compromise between a true federal system, which had become discredited, and a unitary system, which was unsuited to Canadian needs. This compromise was a federal union which should reduce to a minimum the likelihood of serious friction between the central and provincial governments.

Thus the principle of the distribution of powers under the Canadian system is, in general, the antithesis of that employed in the United States. (In Canada the powers of the provinces are enumerated, the "reserve of powers" is left with the Federal Authority.) So that, though a list of the powers of the latter is actually given in the original Act of 1867, this is only for the sake of greater clarity and not to diminish the federal power. The grant of powers to the provinces is considerable, including such matters unknown to ordinary local government as the amendment of their own constitutions (except that it may not abolish the office of Lieutenant-Governor), (direct taxation within the province, the administration of justice, criminal and civil, and the control of municipal government within the province.)

Like Australia, Canada has a Governor-General appointed nominally by the Crown, actually by the British Government with the concurrence of the Government of the Dominion. But, unlike Australia, the federating units have not each a governor appointed from home (*i.e.* with the concurrence of the state government) but a lieutenant-governor appointed by the Dominion Government, and the Lieutenant-Governor of a Canadian province can have no direct communication with the Imperial Government as can the Governor of an Australian state. A further lack of individual identity in the provinces of Canada, as compared with the states of Australia, is to be observed in the Senate whose members are not elected but

nominated for life, and not by the province, but by the Dominion Government as vacancies occur. Further, the Governor-General in Canada may, on the advice of the Dominion Government, veto an Act of a provincial parliament, a power not possessed as to Acts of state parliaments by the Governor-General in Australia.

Finally, as to the Judiciary, there is a Supreme Court in Canada, but it has hardly any power of interpreting the Constitution. Such a power has no reason for existence in Canada, because (1) the "reserve of powers" is with the Federal Authority, (2) the Federal Authority has, under the Constitution, the right to veto provincial legislation. And if, in spite of these facts reducing the chances of legal conflict, conflict none the less does arise, there lies an ultimate appeal in London to the Judicial Committee of the Privy Council. This has frequently been invoked in the past, so that, in effect, as Dicey insists, a supreme court is the ultimate arbiter of the Canadian Constitution. (9)

To summarise the differences between Australian and Canadian federalism: (1) the Australian Constitution defines the powers of the Federal Authority and leaves the "reserve of powers" to the states, while the Canadian Constitution states the powers of the provinces and leaves the rest to the federal power; (2) Australia leaves the state governors to be appointed apart from federal interference, whereas Canada gives the appointment of them to the Ministry of the Dominion; (3) in Australia the Commonwealth Government has no right to interfere with state legislation, while in Canada the Dominion Government has a veto on provincial statutes; (4) Australia has a supreme court which may interpret the Constitution, whereas the supreme court in Canada has such power only in a very slight degree; (5) the Australian Senate is elected in equal numbers from the states, while members of the Canadian Senate are nominated for life by the Dominion Government. In general, then, the Commonwealth of Australia is far more federal than is the Dominion of Canada, or, to put it the other way, Canada approaches much nearer to the type of state called unitary than does Australia. Thus,

in spite of the propinquity of Canada to the United States, and the vast distance which separates Australia therefrom, the federalism of Australia resembles that of the United States, in every particular, far more closely than that of Canada does.

VII.—THE SPECIAL CASE OF THE NEW GERMAN REPUBLIC

Federalism has a very long history in Germany. After the death of Charles the Great in 814 his Empire fell to pieces, and when the German section of it was restored it was never again so centralised as it had formerly been. Feudalism wrought great havoc in Germany, and the history of the Holy Roman Empire is one long tale of attempts to conceal the facts of disintegration, or, at least, decentralisation, with the cloak of an elective imperium. Within the confines of what appeared to be a federal empire there grew up, in fact, two great rival states—namely, Austria and Prussia. Even after the fall of Napoleon, who only enhanced the atomisation of Central Europe, these two could not compose their differences and the compromise called the Germanic Confederation, set up at that time, proved but a prelude to the final conflict between them. In 1866, after his success in the Austro-Prussian War, Bismarck drove Austria out and established the North German Confederation, which was joined, during the Franco-Prussian War, by the South German States, and the war ended in the triumphal proclamation of the German Empire (1871) which was to last until the closing days of the Great War.

It is not proposed here to enter into the details of the Constitution of either the old German Empire or the new German Republic. But we should note that from the federal point of view the differences between the two are more apparent than real. The real change lies in another direction, which we shall discuss in a later chapter. Under the Empire, as it was established in 1871, the federalism was of a unique kind. It appeared to come into being by the spontaneous desire of the federating units, while actually the desire was indirectly induced by the force of Bismarck. It cannot be said that the German bodies politic desired either unity or union. They did not

desire anything. Now, in this respect, perhaps the spirit of the post-War Germany differs from that of the pre-War Germany. The states of Germany after the Great War did desire union, or rather the perpetuation of the Union, because they saw that, helpless as they were in any case, they would be still more helpless without it. And there was a clear case of desire, now because it was manifestly such an excellent opportunity to disintegrate if they wished. The War had not only discredited, but abolished, the force that was Prussia, which fact provided simultaneously the opportunity to break up the Union and the occasion of the will to keep it in being.

But the *form* of the federalism of the new Republic is not substantially different from that of the old Empire. What has gone is the hereditary Emperorship, and this is a radical difference, because the hereditary German Emperor was also hereditary King of Prussia. This would not have mattered so much except that the power of the emperor was not nominal but real, and while that was so Prussia was supreme, not merely from the point of view of its numbers in the two Houses of the Imperial Legislature. Further, the House which was representative of the people, the Reichstag, had no real power. The real legislative power lay with the House in which sat the envoys of the states, the Bundesrat, and in this Prussia had a preponderant influence. Thus the old German Empire was neither truly federal nor truly democratic, for in no truly federal system do you find the preponderance of one state, and in no truly democratic state do you find legislation in the hands of an unrepresentative body of men. But the Empire was none the less a real union. The power of the federal authority was defined, that of the states undefined. But the stated powers of the federal authority were very wide, and the Constitution could be changed by the ordinary process of legislation, so long as there were not fourteen negative votes. There was a supreme court which settled disputes between the federal power and the states or between one state and another. But this supreme court was nothing but the Bundesrat or the committee of the states, and this being predominantly Prussian, and the Emperor being the all but absolute monarch of Prussia, it is

not difficult to realise how little of the air of real federalism was breathed in pre-War Germany.

In the new German Constitution the powers of the Federal Government are enumerated, but in two lists. The first (Article 6) is a list of powers solely in federal hands. The second (Article 7) is a list of powers which the Federal Government shares with the states, and Article 12 asserts that "so long and in so far as the Federal Government does not make use of its legislative power, the States retain that power for themselves. This does not apply to the exclusive legislative powers of the Federal Government" (*i.e.* those enumerated in Article 6). (Federal law overrides state law, and in the case of differences of opinion as to whether state law is compatible with federal law, an appeal shall be made to the supreme court for a more exact interpretation of the federal law. Now, this supreme court is no longer the Upper House, but a pure court of justice.)

The Reichstag is now a real legislative body. The Upper House (now called the Reichsrat) is still made up of envoys of the state governments, but its power is greatly diminished. It is quite unlike the Senate in the United States of America and Australia where, though the members are sent from the states, yet they are democratically elected, and where all states are equally represented. The new régime has not substantially affected the numerical preponderance of Prussia over the other states, since there is to be one member of the Reichsrat for every million inhabitants of any state. But, since its powers are now strictly limited, and since the identity of Prussia and the Empire in the executive has disappeared, there is a very real difference between Prussia's power now and her power in the old Empire. The creation of a supreme court as partial interpreter of the Constitution has introduced a true element of federalism. Beyond this the principle of the Referendum has been freely introduced into the Constitution, and it can be invoked either by the government or the people themselves, and on questions of ordinary legislation as well as proposed amendments to the Constitution.

Thus there are present in the Germany of to-day the three

essential characteristics of federalism—namely, the supremacy of the Constitution, the distribution of powers, and a court to interpret it in case of conflict between the authorities dividing the power. But Germany still has unique features as a federal state. First, instead of an absolute division of powers in which either those of the federal authority or those of the federating units are stated, there is a triple division into those belonging exclusively to the federal authority, those it shares with the states and those not mentioned (but even here federal law overrides state law). Secondly, the Upper House, representative of the states' interests as distinct from those of the people as a whole, instead of being, as in all other federal states of importance to-day, equally representative of all the states, is brought together on a population basis which gives Prussia more than twice as many members as the next largest state (Bavaria) has. Thirdly, the President is popularly elected (in which respect Germany is like the United States but unlike Switzerland) but acts through a ministry responsible to the legislature (in which respect Germany is like Canada and Australia, but unlike the United States). (10)

VIII.—FEDERALISM IN LATIN AMERICA

Latin America is an area as yet only very partially opened up to the forces of civilisation, and what lessons it may have to teach us in the art of government belong rather to the future than to the present and past. Nobody would take the states of South America as examples of the beneficent working of democracy or of the advantages to be gained from documentary constitutions. Most observers, on the contrary, have used them as awful illustrations of the fate that awaits peoples who, without any experience in the art of self-government, break away from their ancient tutelage. And certainly the instability of political institutions in South America would seem to justify these dark warnings. Nevertheless, as Bryce says, the vicissitudes and experiences of the states of South and Central America in the course of a century's development, since they threw off the yoke of Spain (and Portugal), shed a flood of light upon

"certain, phases of human nature in politics." For us their interest lies in the manner in which they show the influence of Western constitutionalism, and especially of that of the United States, even in areas which are not properly ripe for it. Granting the declaration of independence on the part of these states from their European masters—a movement almost inevitable in the circumstances of the time—it is difficult to see what form of government would have been best for them. Political stabilisation is the urgent need in these areas, and certainly it cannot be said that federal constitutionalism has supplied it.

Of the twenty republics of Central and South America, three—namely, the Argentine, Brazil, and Mexico—are interesting as examples of federal states. These three states declared their independence during the great period of revolt from Spain and Portugal (1810–1830). The Argentine in 1825 promulgated a Constitution based upon that of the United States and was otherwise known as the United Provinces of the Rio de la Plata. The states or provinces have a reserve of powers, but for a long time their rights were abused by the political chicanery of dictators at the centre. Generally speaking, however, the Argentine has come successfully through these turmoils and is now one of the most prosperous states in Latin America. Brazil declared its independence of Portugal in 1822, but continued to be governed down to 1889 by an Emperor, Dom Pedro II. On his abdication, two years before his death, Brazil was declared a federal republic, in which the state governments have a large "reserve of powers" which they are able to enjoy owing to the huge distances which separate the thickly populated areas. The Constitution at the centre, however, enjoys an authority which is largely theoretical. As to Mexico, it adopted a federal scheme of government, founded upon that of the United States, about a century ago, which, with one or two amendments, has since remained nominally in force. But there is no basis of self-government in the federating units of the United States of Mexico, and it cannot be said that the Constitution has ever been properly at work.

The only conclusion to be drawn from these observations is that federalism is an ideal which cannot be realised unless

the desire for it is backed by the will to achieve it; which means, if necessary, the use of force to which the federating units subscribe in common. The force of opinion is a more obvious and immediate need for federalism than for any other constitutional form, and where political experience is lacking—and this is a mild way of putting the abysmal absence of any sort of education among the vast majority of South Americans—federalism can hardly succeed. Force, indeed, has not been absent in all South American states, but its use has been factious, partial and despotic. The moral is clear. "Do not," as Lord Bryce said, "give to a people institutions for which it is unripe in the simple faith that the tool will give skill to the workman's hand." Still, one or two of the more advanced states—not least among them the three we have just mentioned—have begun to show real progress, and if this goes on, constitutionalism will yet achieve something. Federalism may yet be the line along which political stability will be maintained when it is seen that without that stability the vast economic resources of Latin America can never be fully exploited.

READING

- BRYCE : *American Commonwealth*, Vol. I, Chs. ii, xxvii-xxx. *History and Jurisprudence*, Vol. I, Essay viii. *Modern Democracies*, Vol. I, pp. 367-385, Chs. xxxiii, xxxvi ; Vol. II, Chs. xxxviii, xli.
- DICEY : *Law of Constitution*, Chs. ii and iii, Appendix, Notes ii, viii, and ix.
- KEITH : *Responsible Government in the Dominions*, Vol. I, pp. 505-560 ; Vol. II, pp. 597-621.
- LEACOCK : *Elements of Political Science*, Pt. II, Ch. v.
- LOWELL : *Governments and Parties*, Vol. II, Chs. v-vii, and pp. 180-192. *Greater European Governments*, Chs. ix, xi, pp. 270-283.
- MARRIOTT : *Mechanism of Modern State*, Vol. II, Ch. xxxvii.
- NEWTON : *Federal and Unified Constitutions*, pp. 66-100, 239-294, 324-358, 408-436.
- REED : *Form and Functions of American Government*, Ch. iv and Appendix A and B.
- SIDGWICK : *Elements of Politics*, Ch. xxvi.
- WILLIAMSON : *History of British Expansion*, pp. 484-536.
- WILSON : *State*, pp. 249-254, 283-300, 387-392, 438-447.

BOOKS FOR FURTHER STUDY

- BROOKS : *Government and Politics of Switzerland*.
- KRÜGER : *Government and Politics of the German Empire*.
- PORRITT : *Evolution of the Dominion of Canada*.

SUBJECTS FOR ESSAYS

1. Distinguish between a confederation and a federal state.
2. "A federal state is a political contrivance intended to reconcile national unity and power with the maintenance of 'state rights.'" Discuss this definition.
3. In what sense is it true to say that in a truly federal state sovereignty resides in the Constitution?
4. What is meant by the term "Reserve of Powers"? Explain the ways in which the power in a federal state may be divided between the federal and the state authorities.
5. Explain the federal system in the United States of America.
6. Trace the history of federalism in Switzerland and compare its existing form with that of the United States.
7. State the likenesses and differences between the federal system of the Australian Commonwealth and that of the American Union.
8. In what respects is the federalism of the Dominion of Canada only partially developed?
9. Examine the federal elements in the new German Republic and show how they differ from those of the pre-war German Empire.
10. Account for the presence of federalism in some of the states of Latin America and show how far it has succeeded in creating political stability there.

CHAPTER VI

THE FLEXIBLE CONSTITUTION

I.—GENERAL REMARKS

IN the first chapter we gave, as the best definition of a constitution, that of the late Lord Bryce, who called it a "frame of political society organised through and by law, that is to say, one in which law has established permanent institutions with recognised functions and definite rights." When we consider that it is to the same author that we owe the terms "flexible" and "rigid," to denote a distinction between two great classes of constitutions, we have again emphasised for us the fact that the distinction sometimes drawn between written and unwritten, or, as we have called them, documentary and non-documentary constitutions, is a false one. For a constitution is none the less a constitution even though it be not set out in documentary form. To deny this is to fall into the error of de Tocqueville, the great French expositor of American Democracy, who, because he found no constitutional document in our country, asserted that the English Constitution did not exist. v

The documentary constitution is a manifestation of an advanced political consciousness which is awakened to the inadequacy of existing methods of government. Paraphrasing Bryce, we may ascribe such action to one or more of the four following motives :

(1) The desire of the citizens to secure their own rights when threatened and to restrain the action of the ruler.

(2) The desire on the part either of the ruled, or of the ruler wishing to please his people, to set out the form of the existing system of government, hitherto in an indefinite form, in

positive, terms in order that in future there shall be no possibility of arbitrary action.

(3) The desire of those erecting a new political community to secure the method of government in a form which shall have permanence and be comprehensible to the subjects.

(4) The desire to secure effective joint action by hitherto separate communities, which at the same time wish to retain certain rights and interests to themselves separately.

And again, following the same authority, we may say that documentary constitutions arise in one of four possible ways :

(1) " They may be granted by a monarch to his subjects to pledge himself and his successors to govern in a regular and constitutional manner, avoiding former abuses." Such was the case with the Prussian Constitution of 1850, the French Charter issued by Louis XVIII in France in 1814, and renewed with some differences in 1830 by Louis Philippe, and the Constitution of Sardinia in 1848.

(2) They may be brought into being by a nation throwing off its old form of government and creating an entirely new one, as was the case with the successive French Republics from 1790, and with the original thirteen states of the American Union.

(3) They may be created by a new community, not hitherto a national state, when it enters upon a formal existence as a self-governing entity. This is obviously the case with the new post-War states in Europe, such as Poland and Czecho-Slovakia.

(4) Finally, they may arise out of a tightening of the tie holding together loosely bound self-governing communities. By such a process a mere league of states becomes a federal state and the constitution on the basis of which such a change takes place is bound to be rigid. By such a process the loose confederation of North American States as it existed in 1783 at the moment of the official separation from England became in 1789 the federal state we know to-day. The existing Swiss Republic is another example. So also was the modern German Empire which was created in 1871 by steps out of the Germanic Confederation of 1815.

Now, every existing constitution of importance is of this order except one—namely, the British. But more than one

constitution is like the British in the sense that it can be altered by the ordinary method of legislation without following a special procedure for that purpose laid down in the constitution. Thus, the distinction drawn between unwritten and written constitutions is triply misleading. First, it misleads us by suggesting that while the force of custom and precedent is the sole ground of development in an unwritten constitution, the written constitution knows nothing of unwritten usage. But, as we have said, no constitutions are either written or unwritten in this absolute sense. If, when we used the term flexible constitution, we meant one in which no written laws existed for its perpetuation, we should be bound to admit that there does not exist in the world to-day a single instance of a flexible constitution. When we speak, for example, of the Constitution of the United Kingdom as being unwritten, we do not for one moment mean that there are no laws in its composition, for, as we shall show, there are many. All we can say of the British Constitution in this connection is that it is more permeated by custom and convention than any other. And of all other constitutions we may say that not one of them is unaffected by custom and convention.

Secondly, the distinction between unwritten and written constitutions is misleading because it implies that there can be no laws of the constitution except those which are all brought together in one document called the constitution. If no such document exists, this argument seems to say, then there is no law of the constitution. This was the implication of de Tocqueville. He was writing in 1834, but he would probably say the same if he were writing in the twentieth century, for nothing has happened in the meantime to alter the argument : there is still no document called the British Constitution. Laws modifying the Constitution in this country have, it is true, been passed since de Tocqueville's time, but to say, as one recent writer says, that since the passage of the Parliament Act of 1911, the British Constitution is a partially written one, is to ignore the great mass of laws which helped to mould the Constitution before that time. If it is now, since 1911, partially written, it was also partially written before that time.

Thirdly, this distinction is misleading because thereby we are persuaded to believe that law must necessarily be in a written form. This is certainly not true. Even if we could point to a constitution which had developed solely upon custom, we might still assert that it had law, for custom can have the force of law ; and further than that, law may be written without passing through any process that we now know as legislation.

II.—THE NATURE OF LAW

In our introductory chapter we spoke of three kinds of law. First, we have that bundle of social habits which we call custom, untouched by any formal legal procedure. Many of these remain in modern conditions as a sort of legacy from early times, but are, in highly civilised communities, like modern Western states, little more than rules of morals and manners. Secondly, we have a formal category of laws, not written out in statute form, but being fully enforced as law in properly constituted law-courts. This is case-law or judge-made law, and, in England, that great mass of law which we know as the Common Law. Thirdly, we have written laws called statutes, properly passed through a legislature or parliament.

These three branches of law all have the same ultimate sanction, which is society's desire for peace and progress ; for the state, as we have emphasised earlier, is only society politically organised, and the more society becomes conscious of its political self, the more it will deliberately use instruments of government to protect and advance its purposes, and the more also it will check any abuse of power on the part of those instruments. A community organised for law (which, it will be remembered, was one of our definitions of the state) must move forward, but it is conscious that it must not do so too quickly. For society has two aspects, the static or still and the dynamic or moving, a fact emphasised in Auguste Comte's dictum that "progress is the development of order." And the cardinal problem of government is how to serve the one without outraging the other. Thus the three kinds of law interact upon

one another. If, for example, custom seems to be developing too swiftly, judge-made law or statute law can stem its flow ; if a decision of the judiciary is against the current of opinion, the legislature may be invoked to reverse its decision ; if legislative enactment outrages the opinion of the community, that opinion can either force the hand of the legislature to alter or repeal it or make such a law a dead letter by merely refusing to obey it.

The same remarks apply to that branch of law which directly affects the constitution of a state, that law with which we are specially concerned here and which is generally called Constitutional Law. All states have this branch of law, and all three methods of law-making—the customs or conventions of the community, the decisions of judges, and enactments of the legislature—are employed, though in varying degree, in the creation of it. As to the first two kinds, constitutions differ only in degree, for there is no constitution without its conventions which have been founded on the basis of custom rather than of law, nor one in which the decisions of the courts have not played some part in constitutional development, from the few in the case of the United States or France to the many in the case of our own Constitution. As to the third kind, *i.e.* actual statute law, constitutions differ not only in degree but in kind. And here we must be careful to distinguish between two meanings of the term Constitutional Law. In its widest sense it means any statute-law or case-law which affects the constitution. In a narrower sense it means only that law contained in a document called the constitution, and laws passed to change or amend the constitution by some special process, the details of which are set out in the original constitution.

Now, it is clear that a non-documentary constitution, like our own, has no constitutional law in this narrower sense. It is also evident that a documentary constitution which lays down no special conditions as to the amendments—as is the case, for example, with the Italian Constitution—can have no amending constitutional law in this sense. The essential difference, then, is between the methods of bringing about changes in them. An observer would not expect a constitution whose roots are

very old, like our own, to be in the form of a document, for the earliest forms of government are necessarily of a fluid and indeterminate type, the stream of custom being, so to speak, dammed from time to time by a wall of law. One would not here look for such a highly-polished instrument as a documentary constitution, forged by a society groping so blindly after its purposes. Such an instrument is a much later development, a manifestation, as we have said, of an advanced political consciousness, which finds occasion, through some upheaval, to express itself suddenly and completely. But, if a political society like our own has found no need for this sudden and complete expression at one time and in one document, that does not make its instrument of government any the less authoritative, and its constitutional changes, passed in the form of ordinary laws, are just as stable as if passed by a special process set out in a document.

The same is true of any constitution which, though in the form of a document, allows changes to be made in it by the ordinary process of legislation, and sets up no special machinery for such a purpose. Here, then, as we have shown, is a means of classifying constitutions according to the method by which the constitutional law is enacted. Certain constitutions state that this branch of law must be passed by a different method from that used in the ordinary business of legislation. Such are rigid constitutions. Others make no such distinction. Under such constitutions the body responsible for any legislation is responsible for all legislation, constitutional or otherwise. These are flexible constitutions, and the thing that characterises the state to which such a constitution applies is the unlimited authority of its Parliament.

III.—THE TRUE CHARACTER OF A FLEXIBLE CONSTITUTION

The test of the flexible constitution, then, revolves upon the question of the method of amendment. If the method of passing constitutional laws is identical with the method of passing ordinary laws not of a constitutional character, then the constitution is flexible. Every modern constitutional state has,

as we have said, a properly constituted legislature corresponding to the British Parliament, and the expression "unlimited authority of parliament" means that there is no power in the state which can either limit its scope or override its decisions. Not all parliaments have this unlimited authority—a fact we have already emphasised in the case of the federal state. But it is not only in federal states that we find restrictions of this sort placed upon the representative legislative assembly. In many unitary states the constitution is regarded either as a document of special sanctity, not to be touched except by some special machinery, much more cumbrous than the ordinary legislative process, or else as a law of superior obligation which imposes, for effecting changes in it, legal restraints upon the action of the legislature.

Broadly speaking, there are four methods of constitutional amendment in use among states with rigid constitutions—first, that by the legislature under special restrictions; secondly, that by the people through a Referendum; thirdly, that method peculiar to federal states where all, or a proportion of, the federating units must agree to the change; and fourthly, that by a special convention for the purpose. We shall note these in greater detail in the next chapter. Here it is necessary to point out that in a state with a flexible constitution there is no restriction of this nature whatsoever. In the introductory note to his charming book, *The Government of England*, a great American, A. Lawrence Lowell, has observed that the difference between a flexible and a rigid constitution may be very slight, and that the distinction tends to get less clear with the passage of time. "From countries which can change their fundamental constitutions by the ordinary process of legislation," he says, "we pass by almost imperceptible degrees to those where the constitutional and law-making powers are in substantially different hands."

From this the author argues that the classification of constitutions into flexible and rigid is hardly a real one. Yet it is. If we care to regard the alteration of constitutions in the modern world as characterised by an ascending scale of difficulty, with the completely flexible Constitution of the

United Kingdom at one end and the highly rigid Constitution of the United States at the other, is it possible safely to assert that we cannot find the dividing-line? Surely that line lies where the legislature begins to be hedged about with restrictions when it has to deal with constitutional law. On one side of this line are the states whose parliaments, even though established upon the basis of a documentary constitution, are unrestricted in this respect. On the other are those whose parliaments are not unlimited. The list of the latter begins with those, like Belgium and Rumania, where a special quorum of members is required to be present when constitutional proposals are being considered, and a special majority is demanded for their passage into law. It rises to the case where the ordinary legislature is not allowed on its own initiative to pass constitutional acts at all, as in the United States.

The true character of a flexible constitution is therefore clear. Flexibility and rigidity form a perfectly valid basis of classification. Among modern states there are four in which no special procedure for constitutional purposes is known. These states are Great Britain, New Zealand, Italy, and Finland. These four have, therefore, flexible constitutions. Their parliaments can do exactly as they like without legal hindrance. Where no documentary constitution exists, as in the United Kingdom, Parliament can repeal any or all of its separate laws, can legislate to end any merely conventional practice, and could, if it wished, introduce an entirely new and complete instrument of government. There are many serious reasons, of course, why it should not go to extremes in such matters, but there exists no technical prohibition against such action. Where there is a documentary constitution, as in the case of the other three states under consideration, either the statement as to amendment in the constitution categorically leaves the ordinary legislature a free hand to do as it likes, which is the case with New Zealand; or no conditions appear in the constitution as to what may be done to alter it, which is the case with Italy and with the new state of Finland. Therefore, in these three instances, the legislature is supreme in this regard. We will now proceed to a closer examination of these

four examples, leaving for our next chapter a detailed study of some important rigid constitutions.

IV.—GROWTH OF THE FLEXIBLE CONSTITUTION OF GREAT BRITAIN

The British Constitution is very old, but its age is sometimes exaggerated. There is left in England to-day, for example, little of the government which Alfred the Great knew, and if Magna Carta is the "Palladium of British liberty," very few of the current maxims of government in this country can be traced to that particular source. Indeed, to emphasise the venerability of the British Constitution is, perhaps, to put the stress in the wrong place, since the peculiar strength of that Constitution lies not so much in its great age as in its flexibility, without which the ancient Constitution would long since have disappeared in name as it has in fact. The original prerogatives of the Crown of England have in the course of centuries been overlaid in practice so that they now remain only in a form of words. Thus nominally the United Kingdom remains a monarchy, and this nominalism is followed in the words of the very latest statutes, which, taken literally, are utterly meaningless and entirely out of accord with the facts of the moment. No more characteristic quality of the British Constitution, indeed, could be found than this lack of consistency between letter and spirit, for it has permitted change without great crisis and development without much violence, enabling the Constitution to shape itself to the dynamic needs of our society without outraging that conservative sentiment which is the expression of its static self.

The story of the growth of the British Constitution is the story of a continual series of adaptations to existing needs, and this by two distinct sanctions—custom and law. These two elements have to be carefully distinguished, though they are frequently brought together under the heading of Constitutional Law. The first element is strictly not law at all, consisting as it does of maxims and practices which, albeit firmly fixed in our constitutional life, would not, if brought to

the test, be recognised in a court of law. The second element is a body of true law which, whether written or unwritten, would be enforced by the courts. This body of law is made up of three elements, namely, (1) unwritten or common law; (2) statutes; (3) treaties. We have said something of this development in Chapter II. Here we may recapitulate and summarise the growth of this flexible Constitution through five epochs, suggested by the great constitutional historian, Maitland, as follows: (i) from the earliest times to the death of Edward I (1307); (ii) to the death of Elizabeth (1307-1603); (iii) to the death of William III (1603-1702); (iv) to the passage of Gladstone's Reform Acts (1884-5); (v) to the present day.

(i) Anglo-Saxon methods of government underwent considerable change after the Norman Conquest (1066) owing to the systematisation of feudalism (which already existed before that event) under William I and his successors. Many of the old institutions, however, remained, though with changed names, to suit the prevailing preponderance of Norman-French. The most marked characteristic of this period was the centralisation of government in the hands of the king, which proportionately weakened the baronial tendency to disintegration. All through the period from 1066 there was a struggle going on between the King and the Barons whose opposition to the Crown on the head of a weak king led to sheer chaos in the earlier part, as in the reign of Stephen, but took a more regularised form in the later, as is seen in the document called *Magna Carta*, under John. The establishment of Parliament by Edward I in 1295, following the example set by Simon de Montfort thirty years earlier, marks a further stage in the conflict between Crown and Nobility, for this move introduced a leaven of commoners into the counsels of the king, the effect of which was to counterbalance the all-pervading influence of the Lords Spiritual and Temporal therein, though this was not the original intention of the establishment of the Commons, which was to obtain extra grants of money.

(ii) In the first part of the next period (1307-1603) the parliamentary experiment broke down. The Lancastrian Monarchy (1399-1461), having no blood right, had to depend

for its perpetuation upon this institution, which became utterly discredited amid the manifold difficulties of the reign of Henry VI. In this reign the baronage broke loose again and had its final carnival of anarchy in the Wars of the Roses. Under the Tudors (1485-1603) order was restored. Their monarchy was a despotism, but it was veiled in the cloak of constitutional forms. The essential constitutional fact of the Tudor period is the more or less continued existence of Parliament. It is not necessary to ask what it did during this time, but to note the fact that it existed. This marked the true beginning of the convention of parliamentary government in England. Unconsciously, the Tudors, by the use of parliament, laid the foundations of the conflict during the ensuing Stuart period between Crown and Parliament. By the end of the Tudor period the need for a royal despotism had passed and the fact that Parliament had had a more or less unbroken existence in that epoch was all-important in the next.

(iii) During the Stuart period the issue between Crown and Parliament was fought out. After the quarrels of the reign of James I, and the Civil War under his son, the English state saw, for a short period (the Commonwealth 1649-1660), something that it had never seen before, and was never to see again—a series of documentary constitutions. The Restoration brought the revival of the older parliamentary forms, but Parliament was now laying claims to power which it was to make good as a result of the Revolution of 1688-9. This Revolution, which dethroned James II, issued in the Bill of Rights which established in fact the supremacy of Parliament over the Monarch, though in form it left the sovereignty of the state in the hands of the King in Parliament. The Bill of Rights was the first of a long series of statutes which now form the mass of the written law of the Constitution, and from that time it has been not only conventionally unconstitutional but statutorily illegal for any monarch to act as the Stuarts had acted. The Bill of Rights was soon followed by the Act of Settlement (1701), which emphasised the triumph of Parliament over the Crown.

(iv) The next period (1702-1885) was marked by the most

extraordinary development of constitutional conventions which are nowhere to be found in written form, but which none the less form the keystone of the arch of our government to-day. Here came the full establishment of the Cabinet System (of which we shall speak in a later chapter) and of modern parliamentary procedure. Some of this belongs to the conventions of the Constitution, some to unwritten law, and some to statute-law. Of statutes affecting the law of the Constitution, passed during the period, the most important were the Septennial Act of 1716 and the Reform Acts of the nineteenth century (1832, 1867, 1872, 1884, 1885) concerning the franchise, the ballot and the distribution of seats. Lastly, in this period there were some important examples of those statutes which we have called treaties, with Scotland, Ireland, and certain Colonies (with which we have already dealt in the chapter on the Unitary State).

(v) The last period belongs to our own times. The great constitutional act of this period is the Parliament Act of 1911 which arose out of a conflict between the two Houses of Parliament over the rejection by the Lords of Mr. Lloyd George's Budget of 1909. Nothing better illustrates the flexibility of our Constitution and the unlimited authority of the British Parliament than the story of this conflict and the subsequent statute. By a simple Act of Parliament the relation between the two Houses was profoundly affected; the Lords agreed to a radical limitation of their power; and to achieve these ends the conventional procedure of legislation was gone through. Further than this, it illustrates the "dependence in the last resort of the conventions upon the law of the Constitution." Before 1909 it had always been regarded as a convention of the Constitution that the Lords would not amend or reject a Money Bill. When they did so, it required a statute to make the convention good against this threat. The other great statutes of this period were the Representation of the People Act of 1918, which enfranchised a large number of women, and finally, the Act of 1928 granting women the vote on the same terms as men, of which we shall speak in detail later. Further, the period is full of examples of treaties establishing self-govern-

ing institutions in various Dominions. These we shall have occasion to notice fully later on.

V.—THE BRITISH CONSTITUTION AT WORK

Out of this age-long development has emerged the Constitution under which we are governed to-day. The King is still supreme in name : he is nominally the law-giver, the judge, the commander-in-chief of the armed forces. But in fact his power is hedged about with so many limitations that as a political force he hardly exists any longer. The conventions, the unwritten laws and the statutes have so affected this original monarchy as to have transformed it into what is in practice, perhaps, the most real political democracy in the world. It is impossible to make a complete list of the conventions of the Constitution, since by their nature they are constantly changing through a process of growth and decay. But it is possible to distinguish them from the unwritten laws of the Constitution by observing whether or no any court of law would take notice of their violation. The conventions are maxims and not laws, and, as Dicey observes, under a new and documentary Constitution some of them would probably take the form of laws and others would disappear.

Among the principal conventions of the Constitution are the following :

(i) "The King must assent to any bill passed by both Houses of Parliament."

It is fruitless to speculate on what would happen if the King refused his assent, because he never does. Presumably, if any monarch did refuse to sign a bill, a statute would be passed to say that he must. While the convention is never violated, it is as good as a law in the Statute Book.

(ii) "Ministers must resign when they have ceased to command the confidence of the House of Commons."

This confidence need not be that of a majority held by one solid party, a fact illustrated during the Labour Administrations of Mr. Ramsay MacDonald in 1924 and 1929. If the confidence of the majority is lost there is no law to force the resignation

of the ministry. But if the defeated ministry did not resign, supplies of money would be denied, government would be at a standstill, and at last anarchy would ensue.

(iii) A bill must be read three times in each House before being passed and going to the King for signature.

This convention has been modified by the Parliament Act.

To the unwritten laws of the Constitution belong the following :

(i) "The King can do no wrong."

This means that the King cannot be held responsible for any act performed in his name. Ultimately, this statement is to be taken quite literally, for if the King were to commit a crime (Dicey offers as an example the shooting of the Prime Minister) there is no process known to law by which he could be brought to trial. The statement also means that no one can plead the orders of the Crown in defence of any wrongful act. This is law, but it is not written.

(ii) "Some person is legally responsible for every act done by the Crown."

This responsibility of ministers results from the facts that the King can do no wrong, that the Courts will not recognise any act as done by the Crown, and that the Minister affixing the Seal to any act is held responsible for it.

Among the most important rules depending upon statute law are the following :

(i) "There is no power in the Crown to dispense with the obligation to obey a law."

This is definitely stated in the Bill of Rights. In practice it means that any government which refused to recognise the validity of a law existing in the Statute Book would be acting illegally.

(ii) A bill passed by the Commons in three successive sessions and each time rejected by the Lords (provided that two years have passed in the process, but irrespectively of the supervention of a General Election within the period) goes straight to the King for signature. A money bill, passed once by the Commons and rejected by the Lords, becomes law after the passage of one month (the Speaker of the House of

Commons deciding what is a money bill). All this is stated in the Parliament Act of 1911. Under such procedure the Welsh Church was disestablished.

(iii) A parliament having been in existence for five years must be dissolved.

This also was a clause in the Parliament Act.

From these remarks we see how flexible the British Constitution is. There is not one of these customs, not one of these unwritten laws, not one of these statutes which could not be abolished or repealed by an Act of Parliament. While customary developments are perpetually going on, the truth remains that Parliament is supreme and no judge or code of any sort can hold anything superior to its statutes. Nothing could be more eloquent of the supremacy of the British Parliament than the fact that on the very first occasion that it was called upon to dissolve under the Act of 1911—namely, in 1915, the last Parliament having been elected in 1910—it passed an Act to extend its life indefinitely. This was, of course, due to the War, but in order to do this, Parliament sought no special powers nor did it appeal to any tribunal beyond itself. A similar extension took place in the crisis of the Jacobite Rebellion which broke out in 1715. This was in 1716 when the Septennial Act was passed to extend the life of the existing Parliament which had been elected under the provisions of the Triennial Act of 1694.

Yet the British Constitution, flexible though it be, has been taken as the model upon which many rigid constitutions have been founded. In Britain political institutions have grown upon an empirical basis, and the fact that experience rather than abstract principles has always informed their development is what gives them their peculiar stability. Only by a study of the institutions of those states which have founded theirs upon ours can we hope to answer the question whether it is possible to adapt with success that type of government which has been evolved through years of experience to the new-found needs of a community whose liberty, unexpectedly dawning, suddenly requires a fully developed political constitution.

VI.—THE FLEXIBLE CONSTITUTION OF NEW ZEALAND

There are seven Self-Governing Dominions under the British Crown, two of which—Newfoundland and Southern Rhodesia—have a status somewhat less independent than the rest. Of the remaining five, New Zealand is the only one with a flexible Constitution, the rest—Canada, South Africa, the Irish Free State, and Australia—have constitutions of varying rigidity with which we shall deal in the next chapter. There is a sense, of course, in which the constitutions of British Self-Governing Dominions, without exception, are rigid. It is that, since the Constitution in each of these cases was originally granted by an Act of the Imperial Parliament at Westminster—*i.e.* the Parliament of the United Kingdom—no change in that Constitution can be allowed without the sanction of that same body. But in practice this veto is not now effective.

We are not concerned at this point with the question of the possibility of writing a new Constitution for the British Empire—a matter about which we have already said something in an earlier chapter. We are concerned here with the facts of Dominion Government, and those facts depend not upon the views of any one in this country—except in so far as such views may be freely accepted by the Dominions—but upon the political opinions of the people of the Dominions themselves. The generally accepted view now is that the Empire is a group of free states—even nation-states—and any government at home which tried to interfere in the constitutional arrangements of any Self-Governing Dominion without its consent would be courting disaster. For the moment, therefore, we may disregard this ultimate sense in which all Dominion constitutions are rigid, and proceed to examine the flexibility of the Constitution of New Zealand. (11)

We have already shown how the existing Constitution in New Zealand came into existence, and how, starting out upon a federal basis, the state became in 1876 definitely unitary by the abolition of the Provincial Governments. The Constitution of New Zealand, as a document, is found in the Act of 1852 which is entitled “An Act to grant a Representative Constitution to

the Colony of New Zealand." Article 68 of this Constitution states that

"It shall be lawful for the said General Assembly (*i.e.* the New Zealand Legislature established by the Act) by any Act or Acts to alter from time to time any provisions of this Act,"

and adds the proviso about "Her Majesty's pleasure" which, as we have said, is a dead letter.

The original Act has been much changed, but merely by the ordinary process of legislation. Even the Act of 1876, which abolished the Provincial Governments and made New Zealand a unitary state, was an ordinary statute passed by the New Zealand parliament to revise the Constitution in this direction. The original Act has been since judged to have been a wise and liberal measure which not only granted independence in response to a sturdy and healthy demand of nationalism but allowed by its language a revision or amendment of the Constitution by a method suited to the needs of a progressive community.

Thus the Constitution of New Zealand is unique among flexible constitutions. While the Constitution of the United Kingdom is, as we have shown, a non-documentary one which may thus be revised or amended without special procedure, and while that of Italy, as we shall show in the next section, is one which is documentary without reference in its clauses to the question of amendment, the Constitution of New Zealand is a document containing a statement as to the means of amendment which, however, categorically leaves the normal legislature supreme in this regard. It is the only case in which such supremacy is stated in so many words. Again, among Self-Governing Dominions, New Zealand, from the constitutional point of view, stands alone. Like South Africa and the Irish Free State, but unlike Canada and Australia, New Zealand is a unitary state. Of these five the constitutions of all except Canada detail the method of revision. Canada's does not do so beyond reference to an appeal to the Privy Council in London. Yet Canada's is a rigid Constitution, owing to the federal character of the state. Of those which state the method of amendment

New Zealand alone permits the ordinary legislature to revise the Constitution without restriction. The other three make definite conditions in this respect, and we shall therefore deal with them, together with the Constitution of Canada, in the next chapter on Rigid Constitutions. But before doing so we must examine the flexible Constitutions of Italy and Finland.

VII.—THE FLEXIBLE CONSTITUTIONS OF ITALY AND FINLAND

We have shown in Chapter IV how the original Constitution of Sardinia (the *Statuto* issued by King Charles Albert in 1848) came to be applied by stages to the whole of Italy, as one Italian state after another was incorporated in the united Kingdom of Italy. There appears to be no doubt that the *Statuto* was originally intended by its authors to be final, having been granted simply as a Royal Charter. And that is undoubtedly the reason why no stipulations appeared in it as to the method by which it was to be amended or revised. Yet it is manifest that a Constitution written at such a time, in such special circumstances, and for a state so much smaller than that over which it was finally given authority, could not have endured under a restriction so universal, if that restriction had been religiously adhered to. Consistently with the maintenance of the Constitution of 1848, there was but one course open to Italian statesmen since the completion of Italian unity, and that was to interpret the silence of the Constitution-makers on the question of amendment as meaning that it could be altered by the ordinary process of legislation.

This has been the view of most responsible Italians. The great Liberal Prime Minister, Crispi, in a speech in 1881, refused to admit the "intangibility of the *Statuto*," and gave it as his view that the Parliament of Italy in its usual *modus operandi* is "always constituent." "In Italy to-day," wrote a great authority towards the end of the last century, "the theory of parliamentary omnipotence is scarcely less firmly entrenched than it is in Great Britain." This means, as in the case of Britain itself, that ordinary parliamentary enactment is sufficient to effect constitutional changes. The attempt, in

short, to distinguish between constitutional and ordinary law in Italy has broken down. Modifications of the actual text of the Italian Constitution have been frequently debated but never effected. What has happened is that successive parliaments in Italy have contented themselves with passing statutes making effective changes in the Constitution without either altering the constitutional text or even adding clauses thereto. This is true even where clauses of the original Constitution have been rendered almost meaningless by later statutes. For instance, several laws have been passed in opposition to the spirit of Article 1 of the *Statuto* which says that

“The Apostolic Roman Catholic Church is the only religion of the State. Other sects now existing are tolerated in accordance with the law.”

And yet this law has never been removed from the Constitution.

So that we may agree with the Italian who, a few years ago, said that the Italian Constitution “no longer consists of the *Statuto* of Charles Albert.” And if that was true before the Great War, it is much more true now. We may mention, as examples of ordinary statutes which are, in effect, constitutional amendments; the Law of 1865, regulating the organisation of the Judiciary; the Law of Papal Guarantees of 1871, and the several electoral laws which have from time to time modified the franchise and the type of electoral area, and especially those introduced under the ægis of the Fascisti. In the case of all laws passed modifying the Constitution since its original promulgation, no other procedure has been followed than that for ordinary legislation, except that in some cases the introduction and passage of the bill have been preceded by the precaution of a general election.

Apart from statutes, custom has much modified constitutional practice in Italy, and in this respect the *Statuto* has shown a remarkable capacity for adaptation. Nothing is more illustrative of its vitality here than the way in which it has been able to assimilate all the changes brought into it by Signor Mussolini, for Fascisti supporters assert that the Constitution still stands. Luigi Villari, for example, says: “The Constitution has not been altered . . . but the spirit in which govern-

ment and administration are carried on is different." On the changes brought about in the executive department of government, and especially in connection with the general principle of ministerial responsibility, we shall have to enlarge in a later chapter. Here we may conclude with the remark that the flexibility of the Italian Constitution has saved it from complete submergence under the stress of the vigorous social and political reorganisation which has followed the War in Italy. If it had been a rigid Constitution it would certainly by now have been broken, whereas it has up to this moment only been bent. It is surely eloquent of the respect in which Italians hold the *Statuto* of Charles Albert of Sardinia that the very ones who have beaten it almost out of recognition should, at the same time, feel constrained to insist that it remains, in spite of all, the fundamental law of the state. (12)

Of the Constitution of Finland little need be said here in detail. The present Constitution, which came into force in 1919, contains no mention of any special procedure for constitutional amendment, which means that the Finnish Reichstag can change it by the ordinary methods of legislation. But whether such a freedom in the matter of constitutional amendment can consist with political stability in a state whose sovereign independence is so newly-won it is impossible to say. It should be remembered, however, that Finland has a wider and longer experience of constitutional practice than any other of the small post-War Baltic States, for it had been an autonomous province under Russian suzerainty since 1809, and, in spite of Russian attacks upon their independent development, the Finns had in some measure contrived to continue the exercise of their partial constitutional rights until the early years of the Great War.

We have now completed our survey of flexible constitutions. We have brought into this category four distinct states, whereas, if we had confined ourselves to the non-documentary type of constitution, we could have dealt with but one, our own. And it would still have remained for us to discuss the constitutions of New Zealand, Italy, and Finland outside the category of rigid constitutions, in which case our classification, not being

exhaustive, would not have been a valid one. We have now to proceed to a study of some important examples of rigid constitutions.

READING

- BAGEHOT : *English Constitution*, Ch. ix, pp. 241-258.
 BOWMAN : *The New World*, Ch. xxii.
 BRYCE : *History and Jurisprudence*, Vol. I, Essay iii. *Modern Democracies*, Vol. II, Ch. lvi.
 DICEY : *Law of Constitution*, pp. xlviii-lix, 1-34, 106-123, Chs. xiv, xv, Appendix, Notes vii, xiii.
 GETTELL : *Readings in Political Science*, Ch. x.
 JENKS : *Government of British Empire*, Chs. i and ii.
 LOWELL : *Government of England*, Vol. I, pp. 1-15. *Government and Parties*, Vol. I, 150-152.
 MACIVER : *Modern State*, Ch. xii.
 WILSON : *State*, pp. 178-189, 213-215, 424-425.
Europa Year Book for 1928, pp. 482-485.

BOOKS FOR FURTHER STUDY

- ILBERT : *Parliament*.
 LOW : *Governance of England*.
 POLLARD : *Evolution of Parliament*.

SUBJECTS FOR ESSAYS

1. Explain precisely what is meant by a documentary constitution, and state the motives which lead a people to create one and the ways in which it may be brought into existence.
2. Criticise de Tocqueville's dictum that "the British Constitution has no existence."
3. Show how law develops in a community and compare its force with that of custom.
4. Define the term "constitutional law" and show how it differs from other sorts of law.
5. Name the essential characteristics of a flexible constitution, and show how they are exhibited in the case of any one such constitution in the modern world.
6. Trace the growth of the British Constitution and show from its history to what extent we are justified in describing it as flexible.
7. "By the passage of the Parliament Act in 1911 the British Constitution has become a partially written one." Criticise this statement.
8. Distinguish between the conventions and the laws of the existing Constitution of the United Kingdom.
9. Why are we justified in describing the Constitution of New Zealand as flexible?
10. Show how custom has modified the original Constitution of Italy, and especially in the last few years.

CHAPTER VII

THE RIGID CONSTITUTION

I.—SPECIAL MACHINERY FOR CONSTITUTIONAL LEGISLATION

WHILE the outstanding characteristic of the flexible constitution is the unlimited authority of the parliament of the state to which it applies, that of the rigid constitution is the limitation of the power of the legislature by something outside itself. If there are some sorts of laws which the legislature is not permitted by the normal method to enact, it is manifest that that particular legislature is not supreme. There is, in such a case, a greater law than the law of the ordinary legislature, and that is the law of the constitution which is, as we have said, a law of superior obligation unknown to a flexible constitution. The simplest way to grasp the distinction between these two kinds of law is to consider how rigid constitutions have, most commonly, come into existence. In most cases they have been born of the deliberations of a special body of men called a constituent assembly. The business of such a body is not to enact ordinary legislation, but to give force to an instrument of government within the limits of which the ordinary legislature shall function.

The constituent assembly, knowing that it will disperse and leave the actual business of legislation to another body, attempts to bring into the constitution that it promulgates as many guides to future action as possible. If it wishes, as it generally does, to take out of the hands of the ordinary legislature the power to alter the constitution by its own act, and since it cannot possibly foresee all eventualities, it must arrange for some method of amendment. In short, it attempts to arrange for the re-creation of a constituent assembly whenever such matters are in future to be considered—even though that assembly be nothing

more than the ordinary legislature acting under certain restrictions. At the same time, there may be some elements of the constitution which the constituent assembly wants to remain unalterable by the action of any authority whatsoever. These elements are to be distinguished from the rest, and we may call them fundamental law. Thus, for example, the American Constitution asserts that by no process of amendment shall any state, without its own consent, "be deprived of its equal suffrage in the Senate." Again, the French Constitution admits of no means of constitutional amendment whereby the republican form of government might be abolished.

We have seen how the term rigid constitution is to be distinguished from the term documentary constitution. It does not follow, let us repeat, that because a constitution is documentary it is therefore rigid. The sole criterion of a rigid constitution is whether the constituent assembly which drew up the constitution left any special directions as to how it was to be changed. If in the constitution there are no such directions, or if the directions actually leave the legislature a free hand, then the constitution is flexible. If there are restrictions, no matter how slight, then the constitution is rigid. We have already indicated in summary the main methods of modern constitutional amendment. They were :

1 (1) By the ordinary legislature, but under certain restrictions ;

2 (2) By the people through a Referendum ;

3 (3) By a majority of all of the units of a federal state ;

4 (4) By a special convention.

Before enlarging upon these it is necessary to observe, first that they are arranged in order of increasing rigidity as to the method, and secondly that, in some cases, the system of amendment is a combination of two or more of these methods.

(1) There are three possible ways in which the legislature may be allowed to amend the constitution, apart from the case where it may do so in the ordinary course of legislation. The simplest restriction is that which requires a fixed quorum of members for the consideration of proposed amendments and a special majority for their passage. This is the case in Belgium,

Rumania, and in post-War Germany where, however, there are, in certain circumstances, other restrictions. A second sort of restriction is that which requires a dissolution and a general election on the particular issue, so that the new House, being returned with a mandate for the proposal, is, in essence, a constituent assembly so far as that proposal is concerned. This plan, combined with the first, obtains in Norway and Sweden. It might be said to hold also, up to a point, in the case of the United Kingdom, for it is unlikely that a modern administration would undertake a radical change in the Constitution without a previous appeal to the people—an appeal which took place twice in 1910 before the passage of the Parliament Bill. But certainly we cannot say that the constitutional law or even conventions of Britain require it. In 1928, for example, Parliament passed a new Franchise Act and discussed the Reform of the House of Lords, though neither of these questions was an issue at the election of 1924 which returned that Parliament.

A third method of constitutional change by the legislature is that which requires a majority of the two houses in joint session, that is to say, sitting together as one House. This is the case in France and South Africa, both of which we shall examine in detail in a later section of this chapter.

(2) The second plan is that which demands a popular vote or Referendum or Plebiscite. This was repeatedly employed in France during the Revolution and again by Louis Napoleon. It has never been used in Great Britain, though it was suggested as a way out of the impasse reached during the two-year controversy over the Parliament Bill which finally became law in 1911. This system prevails now in Switzerland and Australia, and will be in use in the Irish Free State from 1930 onwards, and likewise, in certain circumstances, in the new German Republic.

(3) This method is peculiar to federations. There is no federation (if we except Germany) whose constitution does not require, in some form or other, the agreement of either a majority or all of the federating units. The voting on the proposed measure may be either popular or by the legislatures of the states concerned. In Switzerland and Australia the Referendum

is in use ; in the United States some states use the Referendum, others leave it to the legislature, detailed directions in this matter being omitted, so far as the constitutions of the separate states are concerned, from the federal Constitution.

(4) Lastly, there is the method in which a special body is created *ad hoc* for the purpose of constitutional revision. As we have said, in a certain sense this is the case where the legislature may revise the constitution under certain restrictions, and more obviously where the two Houses hold a joint session. But in some cases the convention is quite distinct from any other body. In some of the states of the American Union, for example, this method is in use, in connection, of course, with their own state-constitution, and such a method is allowed for—in this case permissive, not coercive—in the Constitution of the Union as a whole. It is also employed in Bulgaria and in some of the states of Latin America.

Broadly speaking, then, there are two methods of constitutional amendment most in use among states with rigid constitutions—first, that by the legislature under special restrictions ; secondly, that by the people in a special reference. Of the other two methods one is peculiar to federal states, but even so is not universal, the other is generally only permissive. Geographically, the legislative method of revision is characteristic of Europe (with the important exception of Switzerland), while the larger legal restraints are confined principally to the United States and some of the Self-Governing Dominions of the British Crown. We will now analyse in greater detail the method of constitutional amendment in some of the more important states with rigid constitutions, beginning with France, the least, and ending with the United States, the most rigid.

II.—THE MODIFIED RIGIDITY OF THE CONSTITUTION OF THE FRENCH REPUBLIC

The present Constitution of France is, unlike its many predecessors, of an unsystematic and fragmentary character. The French, in the course of the eighty years preceding the establishment of the existing Republic in 1875, had experi-

mented amazingly in constitution-making, a branch of practical politics in which the world had come to look upon Frenchmen as pre-eminent craftsmen, who, to quote one of their own authorities, were accustomed to conceive of a constitution as a philosophical work in which everything is deduced from a principle; as a work of art of which the order and symmetry must be perfect; as a scientific machine of which the plan is so exact, the steel so fine and firm, that the very smallest hitch is impossible. How came it, then, that with such a tradition behind them, the French contrived, in 1875, to establish an instrument of government so fragmentary and incomplete? Perhaps the very fact that roughly a dozen changes of constitution had taken place in less than a century persuaded the Frenchman of the futility of the complete constitution, since the least revolution had proved sufficient to overthrow it. Though this was not the only reason, the fact remains that the Convention of 1875, in resisting the temptation to write out a full documentary constitution, assured the permanence of the organisation which it founded and has enabled the Third Republic to withstand the many internal shocks to which it has been subjected.

The real hope of the constitution-makers, indeed, was that the new constitution would not last, since the majority of them were not Republicans at all, but Royalists. The Republic, though not definitely organised until 1875, was actually born in the crisis of the Franco-Prussian War, namely, in September 1870, immediately after the capture of Napoleon III and his army at Sedan. After five months of desperate resistance to the Germans, Paris fell, an armistice was arranged, and in February 1871 a National Assembly was elected by universal manhood suffrage for the set purpose of deciding for peace or war. But it went far beyond this, and, having made peace, it governed France for the next four years and, before dissolving, formulated the existing Constitution. This body became a constituent assembly because in it the Monarchists of various kinds completely outnumbered the Republicans, and they feared a loss of power if another election were held. But, as the great Thiers, the dominant figure in the Assembly, said, there was

only one throne and three claimants for a seat on it. The supporters of these three (*i.e.* the descendants of the Bourbon and Orleanist monarchies and the discredited Bonaparte family) failing to fuse, sank their differences in a compromise and acquiesced in the establishment of a "conservative republic," which, they hoped, would leave the future completely untrammelled. The more advanced Republicans, says Bryce, agreed to this Republic, because they hoped to change it in a radical direction. The Monarchists agreed to a Presidency called a Republic because they hoped to turn the President later into a King or an Emperor.

Not only is the Constitution of the French Republic incomplete, but it is not in the form of a single document, being contained in three constitutional laws passed on February 24 and 26 and July 16, 1875, respectively. These laws were not only passed, as we have shown, by an assembly without a constitutional mandate, but have never been submitted to the people for approval. They establish, in fact, the supremacy not of the President, through the people, but of the Parliament, though under certain restrictions with regard to constitutional law which justify us in speaking of the modified rigidity of the Constitution. The general effect of these laws is to create a legislature of two Houses (commonly called the Chambers), namely, a Senate and a Chamber of Deputies, and a Presidency elected for seven years. They state the method of electing these three, and their relations to one another. They enumerate the President's powers and establish the principle of ministerial responsibility to the Chambers. They provide for the constitution of the Senate as a high court of justice to try the President or the Ministers or persons accused of attacks upon the security of the state.

None of these clauses may be changed except by the procedure laid down in the Constitution for altering them. This is by an absolute majority of the two Chambers in joint session. Such a joint session can be brought into being by each Chamber separately by an absolute majority deciding to do so, either on its own motion or at the request of the President. When once constituted in this form, the National

Assembly, as it is then called, has, apparently, unlimited power, except that, by a constitutional law of 1884, "the principle of the government cannot be the object of a proposal of revision." It is questionable whether even this is binding on the National Assembly, which, if it liked, could use its power to strike this provision out of the Constitution, and then proceed to abolish the Republic as if this condition did not exist. But it is the opinion of most Frenchmen that it would be an act of revolution to use such a power.

The commonest business of the joint session of the Chambers, sitting as the National Assembly, is the election of the President every seven years, or less, if circumstances demand. But on two or three important occasions it has met to revise the Constitution. In 1884 four amendments were adopted, two of which are radical. The first, which we have already mentioned, states that the Republic cannot be abolished, and adds that members of families which have reigned in France are ineligible for the Presidency. The second removed the question of the organisation of the Senate from the domain of constitutional law and left it open to the ordinary process of legislation. Quite recently (in 1926) a National Assembly established a Sinking Fund for the National Debt as a constitutional law.

Outside these few but important provisions, the French legislature is free to do as it likes. And this gives it a large area of legislative power. The Constitution does not pretend to constitute the whole body of constitutional law. "It precludes neither precedent nor growth." And this freedom has undoubtedly been the basis of the health and strength of the Constitution of the Third Republic as compared with the manifold constitutions that preceded it.

III.—THE RIGID CONSTITUTION OF THE GERMAN REPUBLIC

The present Constitution of Germany was promulgated in 1919. Apart from the abolition of monarchy throughout Germany, this Constitution differs in many particulars from that of the German Empire which the War overthrew. In

the pre-War German Empire, which was founded in 1871 at the conclusion of the Franco-Prussian War, the quasi-federal character of the Constitution was most apparent in the Upper House or Bundesrat. This latter, as we have said, was really a body of ambassadors from the various states, which were unequally represented in that assembly. Seventeen minor states had in it one member each. Any proposed constitutional amendment could be defeated in the Bundesrat by fourteen votes. Thus the representatives (or, rather, envoys) of the minor states could, by combining, prevent any change which might be detrimental to their status in the Empire. Or, again, Prussia, which had seventeen seats of its own, could prevent any such change.

In post-War Germany the situation is quite different, because the Reichstag, i.e. the Lower House, has a real existence and force which it did not formerly possess, for under the old imperial Constitution no constitutional amendment could have been even discussed by the Reichstag. The following is (according to Article 76 of the new Constitution) the method of amendment. The Constitution, it states, may be altered by legislation, but only when the amendment is passed by a two-thirds majority of the members of the Reichstag and by a two-thirds majority of the votes cast in the Reichsrat (formerly the Bundesrat). If, after this, one-tenth of the voting population requests that the measure shall be submitted to the people, it must be so submitted and a majority of the voters on the register shall decide for or against. If the necessary majority in the Reichsrat is not reached, and within two weeks it demands a submission of the amendment to the people, it must be so submitted for their approval in the manner stated. ¶

Thus, in post-War Germany, an amendment may be carried without a Referendum by ordinary legislative methods under certain restrictions as to majorities in the Chambers, but either the Upper House or the people may bring the machinery of the Referendum into operation under restrictions of time and percentage of numbers respectively. (13)

IV.—RIGID CONSTITUTIONS UNDER THE BRITISH CROWN

The four Dominions with which we are here concerned have constitutions of varying degrees of rigidity. Taking them in increasing order of rigidity, we may say in general that the rigidity of the Constitution of the Dominion of Canada depends solely upon its federal character. The Union of South Africa and the Irish Free State are unitary states, and this aspect of rigidity, therefore, does not arise. The rigidity of the Constitution of the Commonwealth of Australia depends only to some extent upon its federal character. But they all have interesting features which we shall now examine in detail.

(i) *The Dominion of Canada.*—The Dominion of Canada was established, as we have said, by an Act of the British Parliament of 1867, entitled the British North America Act. This Act made a federation of four provinces, the number of provinces in the Dominion having now increased to nine. The Constitution states the powers of government granted to the Provinces and leaves the rest to the Dominion Government (though it enumerates the chief of these also). Hence the only distinction in Canada between ordinary legislation and constitutional law is that the former concerns all matters not specially stated as within the ambit of provincial legislation, while the latter concerns any fundamental change in this division of rights. Obviously, then, the restriction upon the Dominion Parliament in the matter of constitutional amendment is measured by the powers expressly granted to the Provinces which the Federal Authority cannot touch without their consent.

It is true that the Act of 1867 states expressly what is only implied in the acts conferring Dominion Status upon the other Colonies—that changes can only be carried with the consent of the Imperial Parliament—but this is due to the much greater age of the Canadian Act, passed at a time when the attitude of the Mother Country to the Colonies was utterly different from what it is to-day, and when colonial opinion had not yet moved to the pitch of liberty it has now reached. The Act of 1867 says that the Constitution can be changed only by

an address of both Houses of the Dominion Parliament to the Monarch in England. But this is not the real restriction, for if such a petition were sent it would be granted without demur. Canada now is as free from the interference of Westminster as any other Dominion (if anything, even more so). 'The point to observe is that if once the Provinces of Canada agreed to some change in their relations to the Dominion Authority, no further machinery would have to be used to make such a change law than is employed for ordinary legislation. Thus it is possible to regard the Constitution of the Dominion of Canada as the least or most rigid within the Empire. It is manifestly not a flexible Constitution. But, granted the consent of the Provinces to any diminution of their rights as bestowed by the Dominion Constitution, any change can be carried by the normal act of the Dominion Parliament. On the other hand, since nothing is said in the Constitution as to how it is to be changed—apart from the appeal to the Crown—it might be looked upon as completely unalterable.

(ii) *The Union of South Africa*.—The Constitution of the Union of South Africa is slightly more rigid than that of Canada, and less rigid than that of the Irish Free State and that of Australia. The Union of South Africa consists of four provinces—two British and two Dutch. The solution of the problems arising out of Anglo-Dutch antagonism, revealed in the two South African Wars at the end of the last century, and the mutual bitterness which followed them in the early years of this, was found in the establishment of the Union by the Act of 1909. This, as we have shown earlier, is a federation only in appearance, not at all in fact, for although the powers of the Provinces are indeed stated, they are hardly distinguishable from what we understand in this country as those of Local Authorities, and the Provinces do not hold these powers as of right, but only subject to the will of the Union Parliament. It is not herein, therefore, that the rigidity of the South African Constitution lies.

The process of amendment is definitely laid down in Section 152 of the South Africa Act. It states that the Union Parliament may repeal or alter any provisions of the Act except

(a) one which concerns the rights of the natives within the Union ; (b) another establishing the equality of the Dutch and English languages ; and (c) those laid down in a Schedule attached to the said section, which concerns the administration of native territories (Basutoland, Bechuanaland, and Swaziland) which are not politically on an equality with the other parts of the Union. None of these may be changed except by a bill passed by both Houses of the Union Parliament sitting together and at the third reading agreed to by not less than two-thirds of the total number of members of both Houses. Such is the rigidity of the Constitution of the Union of South Africa.

(iii) *The Irish Free State*.—The Irish Free State, *i.e.* Ireland excluding Ulster (broadly speaking), came into existence as the result of a treaty signed between Great Britain and the part of Ireland concerned, following the devastation caused by repression and war, in 1922. The treaty granted to Ireland the same constitutional status as the other Self-Governing Dominions, establishing a legislature of two houses and an executive responsible thereto, nominally in the hands of a Governor-General appointed by the Crown. The Constitution implements these arrangements, formally stating that any revision or amendment of it that is repugnant to the provisions of the Treaty shall be void and inoperative. But this is only the usual legal safeguard of the ultimate authority of the British Government.

The arrangements for amendment are very clearly stated in Article 50 of the Constitution. An amendment must first be passed by both houses—the Senate and Chamber of Deputies—but it shall not become law until it has been submitted to a Referendum of the whole voting population and has resulted in acceptance by either a majority of the voters on the register or two-thirds of the votes recorded. This method of amendment shall not come into operation until after the passage of eight years from the promulgation of the Constitution. Till then changes shall be carried by ordinary legislative method. This is merely to give the Constitution a chance to establish itself before being tampered with. (14)

(iv) *The Commonwealth of Australia*.—The Constitution of

the Commonwealth of Australia is, as we have already seen, that of a fully-federalised state. It was established by an Act of Parliament of 1900 and came into force in 1901. The Commonwealth is composed of six states (the five divisions of the island of Australia, and Tasmania) all of which have a very lively individual existence. Their rights are very securely safeguarded, for the Constitution enumerates the powers of the Federal Authority, which consists of a legislature of two Chambers and an executive responsible to it, nominally under a Governor-General appointed by the Crown, and leaves the residue to the states, each of which is nominally under a Governor appointed, not by the Commonwealth Government, but by the Crown. The means of amendment are contained in the final chapter (VIII) of the Constitution. Any law proposing an amendment passed by both Houses must be submitted to the electors of the House of Representatives in each state to vote upon it. Or, if any such law is passed by one House and rejected by the other, and is passed again by the same House after the passage of three months or in the next session, the Governor-General may submit it, with or without amendment by the House which objects to it, to the people. If then it is accepted by a majority of the electors in a majority of states and by a majority of all the electors voting, it becomes law. But if the amendment proposes an alteration of the limits of any state or a diminution of its proportion of members of each House or a change of any sort in its separate rights under the Constitution, then, besides the conditions already mentioned to be fulfilled, a majority of electors voting in that particular state must approve the proposed amendment. An interesting example of the working of this machinery of amendment recently occurred (September 1926). Two proposals were made to grant to the Federal Authority (a) a greater power of regulation of industry and commerce, and (b) the power to carry on the public services in the event of their being threatened or interrupted. Neither of these measures succeeded in gaining the two necessary majorities of total voting population and of the states, and so did not become law.

Thus, of all the Self-Governing Dominions, the Constitution

of the Commonwealth of Australia is the most rigid, for not only is it confined within the limitations of a federal state, but amendment is safeguarded by a most elaborate process of Referendum.

V.—THE SWISS CONSTITUTION

The present Constitution of Switzerland, as we have said, came into existence in 1874. Its federal character we have already discussed. Here we have only to note the method of revising it. The Swiss Confederation is composed of twenty-two cantons (*i.e.* states) of which three are each divided into two for political purposes, making twenty-five. The federal legislature, called the National Assembly, consists of two Houses—the National Council and the Council of States. The powers of the Federal Authority are stated in the Constitution; the rest remain with the cantons. The methods of revision are precisely stated, in Chapter III of the Constitution, and they introduce not only the Referendum, but the Popular Initiative, whereby the people themselves may propose amendments. (a) If both Houses agree, by the ordinary process of legislation, upon an amendment, then it must be submitted to the people and approved not only by a numerical majority of the citizens voting, but also by a majority of the cantons. (b) If 50,000 citizens decide that a certain amendment is desirable, they may either (i) send it up as a specific amendment, in which case the Federal Authority must submit it to the people for approval in the manner just stated, or (ii) demand that the National Assembly prepare an amendment embodying the principle which they lay before it, in which case the Assembly must first submit to popular vote the question whether such an amendment should be prepared, and if the answer is in the affirmative (by the two majorities stated), then the Assembly prepares the amendment and submits it again for final approval by the people.

Thus the Constitution of the Swiss Confederation admits of both the legislative and popular methods of amendment, but makes in every case the final sanction of the people an

indispensable condition for the adoption of a proposed amendment and its incorporation into the Constitution.'

VI.—THE RIGID CONSTITUTION OF THE UNITED STATES OF AMERICA

In the case of the United States we have the most rigid Constitution in the world. Its rigidity is due mostly to its federal character, a question with which we have already dealt in Chapter V. What we must emphasise here is the manner in which the Constitution may be changed. The history of the Constitution since its inception sufficiently illustrates the difficulty of amending it. The Constitution coming into force in 1789, the first ten amendments to it were adopted in 1791, the eleventh and twelfth in 1798 and 1804 respectively. After that, sixty-one years elapsed before the adoption of three amendments connected with the liberation of the negroes—in 1865, 1868, and 1870 respectively. Only four amendments have been carried since that time, the first being in 1913, the last in 1920. While there is scope in the Constitution for the growth of conventions of an entirely non-fundamental character, there is no place whatever for constitutional laws to be passed by the legislature of the United States, of its own motion, under any conditions, though that body may propose such amendments. (15)

The history of the foundation of the Constitution accounts for this extreme rigidity. Up to the year 1775 the eastern seaboard of what is now the United States was occupied by a number of separate British colonies, the oldest of which had not been in existence for more than 170 years. They all had a greater or less tendency in their political institutions to break away from the Mother Country who, however, held them in what they at last came to regard as an intolerable economic bondage. The Thirteen Colonies had no common political interests, but had developed their own institutions in isolation, though there had been vague movements towards economic union. What, therefore, urged them to an alliance in arms against Great Britain was no positive stimulus to union, but a

negative incentive to get rid of an unbearable external dominion. This is very clearly shown in the Declaration of Independence in the year following the outbreak of war. "These united colonies," it declares, "are, and of right ought to be, free and independent states." There is no word here concerning a form of common government. And when the war was virtually over in 1781 there began a long internal battle as to what form the Constitution of the Union should take—a battle which continued, after the peace of 1783 had officially given the Americans their independence and their sovereignty.

The Articles of Confederation of 1781, under which the United States continued to be governed for the next eight years, were in effect "scarcely more than an international convention," the central authority having no effective will of its own. The passionate attachment of the states to their individual independence made them afraid to grant to any central authority an executive power which might ultimately deprive them of all their rights. At last a Convention met in Philadelphia in May 1787, and drew up a Constitution which was "a work of selection rather than of creation." Its primary object being to secure the rights of the states while at the same time gaining the advantages of common action, this Constitution, which came into force in 1789, carefully enumerates what the common organ—*i.e.* the Federal Authority—may do, the powers not so mentioned remaining with the States. It established the three great organs of government thus :

(i) The executive—a President elected for four years under rules definitely laid down.

(ii) The legislature—a Congress made up of two Chambers, the Senate and the House of Representatives.

(iii) The judiciary—a Supreme Court of judges given power to interpret this instrument of government.

It was a compromise which won acceptance by guaranteeing to all the states, irrespectively of their size and population, equal representation in the Senate—namely, two for each state—while the House of Representatives was to be composed of members from the various states in proportion to their popula-

tion. The great power which the states had sacrificed was the right to make peace and war; in short, diplomatic power. This was given to the President, who, however, could not make treaties without the ratification of the Senate—*i.e.* the House in which all the States were equally represented. Having stated categorically what powers Congress has, the Constitution goes no further into detail. It is concerned with what they may do, not *how* they shall do it. The Constitution furnishes only the great foundations of the system, but in that direction it is absolutely complete, and secure from abuse, for it lays down definitely and categorically the means of amending the Constitution.

Amendments may be proposed in one of two ways. Either (a) two-thirds of the members (not members present) of each house of Congress may agree that certain amendments are necessary; or (b) Congress shall call a special convention to consider amendments when petitioned to do so by the legislatures of two-thirds of the states. These conditions, be it observed, only concern proposals for amendments. When amendments have been thus proposed they have to be agreed to by three-fourths of the states. When such ratification has been secured the amendment becomes part of the Constitution.

Here, then, is a very definite demarcation between statute law and constitutional law in the American Union. This special machinery for constitutional law is very cumbersome—hard to set in motion and harder still to work to a successful conclusion. The number of states has grown from the original thirteen (the number of bars on the American flag) to the existing forty-eight (the number of stars). The passage of time, therefore, and the startling growth of the United States have only made amendment more difficult, since no amendment can now be adopted without the concurrence of thirty-six states, which was the case with the last two—namely, National Prohibition and Female Suffrage. But the Americans, as we have seen, have a far wider scope for political activity than that laid down in the hard lines of the Federal Constitution.

READING

- BRYCE : *American Commonwealth*, Vol. I, Chs. iii-iv and xxxi-xxxv.
History and Jurisprudence, Vol. I, Essay vi. *Modern Democracies*, Vol. I,
 pp. 240-252, 382-390. Vol. II, pp. 191-196, Ch. xxxix.
- DICEY : *Law of Constitution*, pp. 123-164, 524-5, 533-5, Appendix Note i.
- GETTELL : *Readings in Political Science*, Ch. xv.
- KEITH : *Responsible Government in Dominions*, Vol. I, Pt. iii, Chs. i-iv.
 Vol. II, pp. 741-2.
- LASKI : *Grammar of Politics*, pp. 303-309.
- LOWELL : *Government and Parties*, Vol. I, pp. 2-13. Vol. II, Chs. viii-x.
Greater European Governments, pp. 284-5.
- MARRIOTT : *Mechanism of Modern State*, Vol. I, Chs. v and xvi.
- REED : *Form and Functions of American Government*, Chs. i-iii.
- SAIT : *Government and Politics of France*, Ch. I.
- WILSON : *State*, pp. 146-151, 248-262, 354-5, 412.

SUBJECTS FOR ESSAYS

1. What do you understand by the term constitutional amendment ?
2. How would you recognise a rigid constitution ? How is it to be distinguished from a flexible constitution ?
3. Detail the methods now in use of amending rigid constitutions.
4. Recount the circumstances in which the present Constitution of France was born and explain how far it is a rigid constitution.
5. Describe the procedure for constitutional amendment as set out in the new German Constitution.
6. In what sense are all the constitutions of the British Self-Governing Dominions rigid ?
7. Compare the method of constitutional amendment in South Africa with that detailed in the Constitution of the Irish Free State.
8. What peculiar features of amendment are present in the Constitution of the Swiss Confederation ?
9. Distinguish between the procedure in use for proposing, and that for carrying, constitutional amendments in the United States.
10. In what ways is the Constitution of the United States more rigid than that of the Commonwealth of Australia ?

CHAPTER VIII

THE LEGISLATURE

(1) SUFFRAGE AND CONSTITUENCIES

I.—INTRODUCTORY

WE have observed in the first chapter that the functions of government are to be divided into three, namely legislative, executive and judicial, that is to say, the departments concerned respectively with the making of laws, the execution of laws, and the enforcement of the laws when made. In modern government the importance of the legislative function has greatly increased in proportion to the rising tide of democracy. Legislation, as we understand it to-day, in fact, is a comparatively recent development. In earlier political society there was no distinction between legislative and executive business. The government declared what laws were necessary and carried them into effect. And in the very, earliest days of Parliament in England, for instance, the elected element of it, namely, the Commons, sought to evade the duty of legislation, wishing to leave it, in effect, to the body—the King and his Council—which had always performed it. The earliest business of the Commons, as we showed, was to make not laws but grants of money. But the modern conception of legislation, which results from the growing political consciousness of the mass of the people in whose collective interest most laws are now passed, has given the legislative organ an entirely new significance and at the same time raised questions as to the best means of making it do its work with “the active consent of the citizens.” A discussion of modern legislatures, therefore, involves a study of the democratic methods by which

they are elected, and an inquiry how far the Upper House or Second Chamber is subject to a democratic check. The second point we shall defer to the next chapter. In this we shall confine ourselves to an analysis of modern electoral systems, from two points of view: first from the standpoint of the suffrage or franchise, and secondly from the standpoint of the electoral area or constituency.

II.—THE GROWTH OF POLITICAL DEMOCRACY

By Democracy we mean "that form of government in which the ruling power of a state is legally vested, not in any particular class or classes, but in the members of a community as a whole." It is necessary to emphasise this at the outset of a discussion of electoral questions, because Democracy is sometimes taken to denote the rule of the "masses," as opposed to the "classes." Indeed, the Greek word "demos," from which it is derived, was often used by the Greeks to describe the many, as distinct from the few, rather than the people as a whole; and Aristotle, as we have observed earlier, defined democracy as the rule of the Poor, simply because they always formed necessarily the more numerous class. But we use the term Democracy here in the sense of the rule of the majority of the community as a whole, including "classes" and "masses" (if such a distinction has still any meaning), since that is the only method yet discovered for determining what is deemed to be the will of a body politic which is not unanimous. This will is expressed through the election of representatives. The evolution of this democratic method in modern times has been set within the limitations of the nation-state which has required a representative system. The advance of Democracy, that is to say, has been by way of an ever-increasing extension of the franchise and by way of experiments in the manipulation of the size, form and distribution of constituencies in the hope of securing a legislature most truly representative of the views of the electorate.

This development is entirely modern, for, although the Ancient World had its democracies, notably in Greece and, to

some extent, in the Roman Republic, the forces which have determined the democratic trend of modern times were absent then. Those forces may be summed up as religious ideas, abstract theory, social and political conditions favouring equality, and discontent with misgovernment. In so far as any of these forces were operative at all in the Ancient World, they arose out of causes quite different from those of the modern epoch. The Middle Ages in this respect may be said to have been one long period of complete eclipse of all interest in democratic politics, except for some obscure strivings after equality in some of the mediæval cities of Italy, until the Renaissance ushered in the modern era. For Democracy, be it observed, is not to be confused with republican fervour, as we find it, for example, in the earlier days of the Swiss Confederation, or with the introduction of an element of Commons to assist the King's purse, as in the case of England in the fourteenth and fifteenth centuries, for such phenomena can easily co-exist with an oligarchical and even an autocratic régime.

It was not until after the Reformation that religious ideas began to play a part in the assertion of political rights which came to be conceived as the only means of gaining religious liberty. This is best illustrated in the conflict with the Crown under the Stuarts in England. It was the search after the enjoyment of religious rights which led to the establishment of the New England Colonies, and the Civil War in the reign of Charles I was as much a war of religious as it was of political principles. Abstract theory played an important part in the history of the eighteenth century—a truth which can be demonstrated by an appeal to the documents of the American and French Revolutions. When the authors of the Declaration of Independence and of the Declaration of the Rights of Man postulated that men were born free and equal, they were trying to lay the foundations of an edifice of practical politics, and not merely, as in the case of the early Christian Fathers, making an assertion of the equality of all men in the eyes of God. The influence of the theory of equality upon the franchise has been tremendous because the most obvious application of

it was in the attempt to realise the idea of "one man one vote."

In the nineteenth century, with the improvement in material conditions and the advance of popular education, the general situation was favourable to extensions of the franchise. Western Liberalism assumed the existence of a "theoretically perfect body of citizens between whom there could be no discrimination at the polls." Moreover, the parliamentary system itself worked towards a widening of the electorate, since politicians sought the championship of an ever-increasing body of supporters. There was no great popular outcry, for example, in favour of such a measure as Disraeli's Reform Bill of 1867 which was described by his own party as a "leap in the dark," but the political situation and the social atmosphere made it opportune to establish what was called the "lodger vote." Lastly, discontent with misgovernment has ever been a fruitful cause of franchise extension. Its realisation, it is true, has not always brought into existence the desiderata of its advocates, but, granted the forum of Parliament upon which grievances could be aired, political reformers (as distinct from revolutionaries) have unfailingly looked to electoral reform as a means of improving the conditions of the society to which they belonged. So it was with the Chartists in England from 1837 to 1848, with the Italians before the Unification, with the Liberals in Czarist Russia, and with the oppressed minorities of the Austro-Hungarian Empire in the days before the War.

A very broad franchise is therefore characteristic of all existing constitutional states. The older states have carried out electoral reforms which have led to either adult or manhood suffrage, while the newly-founded states have almost invariably written into their constitutions a clause bestowing universal suffrage irrespective of sex. And with this advance have emerged problems connected with electoral areas. Besides the question of the redistribution of seats arising from industrial progress and from the enfranchisement of sections of the community concentrated in areas hitherto unrepresented, a new problem has been born of the emergence of new minority

groups which these changes have brought into existence. These groups have clamoured for such reform as would assure them a voice in the elected assembly or assemblies. The acuteness of this question may be gathered from a perusal of any election returns in a state not so reformed, showing the comparative figures for votes and seats. The realisation of its urgency has led in many states to constituency reform; in others, so far, only to an exploration of possible ways of removing what is on all hands admitted to be a weakness of the representative system.

III.—MANHOOD SUFFRAGE AND ATTENDANT QUESTIONS

From the point of view of the franchise, then, we may say that states are divisible into two classes—viz. those with manhood suffrage and those with adult suffrage irrespective of sex—though it is sometimes necessary to qualify this absolute demarcation. In some states there are still certain qualifications even for men voters, while in others, which have granted an unrestricted franchise to men, the vote has been bestowed upon only those women who comply with specified conditions. In yet others, women are permitted to vote in municipal but not in national elections. Broadly speaking, manhood suffrage is characteristic of Latin Europe where there still lingers, perhaps, a religious sentiment against the political emancipation of women. Women are still voteless in France, Belgium, Switzerland, Portugal, Spain, Italy, Jugo-Slavia, Bulgaria, and Greece. Jugo-Slavia, in fact, is the only one of the new post-War states of Europe which has not adopted woman suffrage as part of its Constitution. Apart from these nine states, women have the vote everywhere in Europe.

In tracing the history of political enfranchisement on the Continent, we cannot fail to be struck by the influence of France, which was the original home of the abstract theory of political equality. The constitutions arising out of the French Revolution have largely been the pattern for many paper constitutions in Continental states. And yet every attempt to

introduce female suffrage in France since has met with insuperable objections. There has, it is true, been no great public outcry by women for the vote in the countries mentioned, such as marked the first years of the present century in some other countries, especially Britain and the United States. Yet, apart from the criterion of expediency in answering the demands of women for the removal of sex distinctions, there seems to be no reasonable argument against the grant of the franchise to females, once it is admitted that it is a right that all adult males ought to enjoy. Female suffrage would, in fact, seem to be in the logic of Democracy, and women in France in the twentieth century have as good reason for demanding political equality as men had in that country at the end of the eighteenth. In short, it is difficult to distinguish between the "rights of man" and the rights of mankind.

Outside Europe there are fewer constitutional states with only manhood suffrage than those with adult suffrage. Japan, which has made rapid strides in a constitutional and democratic direction in the last quarter of a century, has, since the promulgation of the Constitution in 1890, made no fewer than fifteen attempts at electoral reform. In 1920 the direct tax qualification was reduced from twelve to three yen, whereby the electorate was increased from 1,500,000 to 2,800,000, which had by 1925 expanded to 3,500,000. In the latter year the franchise was granted to all males of over twenty-five years, resident for six months in one constituency and with their own means of subsistence. Thus the electorate was increased to over 14,000,000. How long it is likely to take an Oriental country like Japan to enfranchise its women it is not for a Westerner to suggest. Among British Self-Governing Dominions South Africa is the only one in which women have not the vote. Many projects of female franchise have been introduced in South Africa, but all have been defeated. (16)

The voting age varies greatly from one state to another. In Russia, post-War Turkey and the Argentine the age is eighteen; in Germany and Switzerland it is twenty; in the United States twenty-one; in the United Kingdom twenty-one (for women as well as men since 1929); in Norway twenty-

three ; and in Italy, Denmark, and Japan twenty-five. Some states make voting compulsory. In Mexico, for example, an Act of 1917 denied the vote to those who would not exercise it. In Australia, again, by an Act of 1924, a fine is imposed on voters who do not record their votes for both the House of Representatives and the Senate. Compulsory voting is also the law in the new state, Czecho-Slovakia, where, as a result, at the election of 1925, 90 per cent. of the electorate went to the polls. A similar coercion exists in the Argentine, where the pressure is, in practice, probably of a more violent nature. As to secret voting, this is, in theory at least, common to most states, though there are some—Hungary, for instance—where voting is open and public. In Great Britain the vote recorded by a university graduate requires the signature of the voter and also that of a witness. In some states the ballot-box is little more than an academic principle. In the United States, for instance, the system of “ voting by ticket ” (*i.e.* where all the candidates for various kinds of elective office in each constituency are placed in long lists under party labels) leads to all sorts of abuses of the principle of secret voting.

IV.—ADULT SUFFRAGE TO-DAY

Among states with adult suffrage, Britain, between 1918 and 1928, stood in a middle position. A series of electoral reforms, carried out in 1832, 1867 and 1884–5, had introduced a system of manhood suffrage, but with a diversity of qualifications which were all swept away by the Representation of the People Act in 1918. By this Act occupation as owner or tenant for six months was made the basis of franchise for both men and women for Local Government elections. This Act extended the Parliamentary franchise to all males of twenty-one, not subject to legal incapacity, who had resided in a constituency for six months or who occupied land or premises of not less than £10 annual value. By this Act also the principle of female suffrage received wide, but not complete, recognition. Women of over thirty were given the Parliamentary vote if Local Government electors, as occupiers of £5 annual value or as

wives of electors. In other words, this Act, while admitting the principle of the "lodger vote" in their case, denied to women, even if over thirty, a mere residential qualification.

The Act of 1918 also abolished plural voting except in the case of men who, besides a residential qualification, occupied other premises or land, as owners or tenants, of not less than £10 annual value, and in the case of university graduates (men and women). Both these classes were allowed a second vote, but nobody could have more than two votes. The general effect of the Act was to raise the number of male voters from 8,357,000 to 10,449,820 and to add 7,831,583 women to the register. If women, it was felt, were enfranchised on precisely the same terms as men, the female electorate would greatly outnumber the male, and this was presumably why the continued demand for equalisation of rights was for a long time denied satisfaction. Yet few people can fear any longer what was feared before the War when the Woman Suffrage campaign was at its height—namely, that the parliamentary system would suffer a revolution if this reform were carried out—for it cannot be said that experience has shown that the enfranchisement of women has greatly affected the balance of political forces. Faced with this insistent demand, and the difficulty of logically answering it, the British Government in 1927 began seriously to explore the possibilities of extending the Act of 1918, and it was the general impression that a compromise would be reached by instituting equal qualification for men and women and finding a voting age for both somewhere between the present two—say, twenty-five years. But in 1928 a Bill was introduced to enfranchise women on exactly the same conditions as those already existing for men, and this became the law for the General Election of 1929. The suggestion at the time of the Bill, to make the voting age of all new voters, male and female, twenty-five, merely took the form of a proposed amendment which was easily defeated. As a result of this Act, the total electorate in the United Kingdom is 26,750,000, *i.e.* 12,250,000 men and 14,500,000 women. Examining the growth of franchise extension in this country from the first measure of reform to the last, we find that before

the Reform Act of 1832 the electorate numbered 435,391, and that that measure added 217,386 voters to the register. The Act of 1867 added 938,427 voters to the existing electorate of 1,056,659. The Act of 1884 added a further 1,762,087 names, and in 1918 13,000,000 new voters were registered. Under the new Act (1928) 5,240,000 women are newly enfranchised. It is now safe to say that the process of mere franchise extension, as distinct from less traditional methods of electoral reform, has gone about as far as it can go in Britain. There are other possible lines of democratic reform which we shall discuss later.

As in Britain, female suffrage was granted universally in the United States after a long agitation on the part of women. In the United States the Federal franchise has become very important in elections for three distinct kinds of office, namely, Representative, Senator, and President. The original Constitution laid down no precise rules about these elections. As to Representatives, it merely said that they were to be "chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for the most numerous branch of the State legislature." As to the Senate, it was to "be composed of two senators from each State chosen by the Legislature thereof." As to the President, each State was to appoint the necessary number of electors "in such manner as the Legislature thereof may direct." In each of these cases, then, the detailed method of choice was left to the states individually. But since the Constitution was originally promulgated, some profound modifications affecting the vote have been introduced. In the first place, the vote became a vital part of the Presidential Election as soon as the practice grew up of electing Electors not because of their suitability for that office, but because they were pledged to the support of a particular candidate; when, that is to say, the Presidential Election became, in effect, a popular affair. Secondly, by the Seventeenth Constitutional Amendment (1913), the popular election of Senators was made obligatory on all states, the Amendment adding that "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislatures."

The position at the end of 1913 in the United States, therefore, was that whoever had the vote for the election of the Lower House in any state had also the vote for the election of members of both Houses of Congress and also for the election of Presidential Electors (*i.e.* of the President). And since no details were laid down on the matter in the Constitution, it was always within the power of any state to grant women the vote for either or both Houses of its own Legislature. But if women in any state had the vote for elections to the state Lower House (*i.e.* the more numerous branch of the State Legislature) they, by the Constitution, had the vote also for Federal Representatives, and, from 1913 onwards, for Federal Senators, and by practice also for Presidential Electors. Some twenty-nine states had already bestowed the franchise on women, when during the Great War an agitation began for a Constitutional Amendment to grant nation-wide suffrage to women. In 1919 the proposal was passed by Congress, after a close fight in the Senate, and submitted to the states for the necessary ratification on the part of thirty-six out of the forty-eight states. By the end of 1919 only twenty-two states had ratified the Amendment, but, thanks to a campaign cleverly organised by the National Woman Suffrage Association, the thirty-sixth state was won over in time for the Presidential Election of 1920.

The position in the United States now is, to quote the words of the Nineteenth (and latest) Amendment, that (17)

“(1) The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. (2) Congress shall have power to enforce the provisions of this article by appropriate legislation.”

This means, in practice, complete and unqualified adult suffrage throughout the American Commonwealth.

As we have said, adult suffrage is a constitutional right in all the European states created by the War, with the exception of monarchical Jugo-Slavia. Of these states Germany is the most important. The Constitution of 1919 destroyed at a blow all the old electoral evils which had existed under the Imperial Constitution of 1871, including the crying injustice

of the system of voting in classes and of the method of indirect voting which obtained in various German states. But, further than this, it introduced votes for women and established a system of direct, equal and universal suffrage throughout the Reich for Imperial, State and Municipal elections. Thus any German, man or woman, of twenty years or more, has the right to vote for the President, for the Reichstag, and for all the elected political officers of his or her own state or municipal area. (18)

V.—THE SINGLE-MEMBER CONSTITUENCY

From the point of view of electoral problems, states are again divisible into two classes according to the type of electoral area or constituency that they possess. The constituency in a modern constitutional state is arranged so that it returns either one or several members. Generally speaking, when representative Democracy was in its infancy, the normal constituency arrangement was the division of a country into a number of electoral areas, urban and rural, each returning a single member. But this territorial division was a mere convenience, and with a rapidly fluctuating relationship of population to district, constant redistribution of seats was necessary. In an expanding industrial epoch, however, it was not possible in most cases hereby to keep pace with the never-ceasing increases and variations of the population. Nor was this the only objection to this flat system of territorial division into single-member constituencies. A second, and even more urgent, problem was that of securing a system of voting which should result in the elected representatives forming an assembly that should adequately reflect the balance of opinion in the electorate.

The system of single-member constituencies is the one in force in Great Britain and the United States. In all constituencies, except one or two, in Great Britain one member is returned and in no constituency are more than two returned. All redistribution Acts have perpetuated this system. The House of Commons at the election of December 1910, for

example, was elected in 643 constituencies, of which only twenty-seven (including three of the University constituencies) returned two members. The last Redistribution Act (the Representation of the People Act of 1918) did nothing fundamentally to change this plan, since it merely based the proportion on one member for every 70,000 of the population. In the United States all constituencies for both Senate and House of Representatives are single-member constituencies. It is in these two countries, therefore, that constituency reform has been most urgently advocated, for it cannot be said that in either case the electoral system has achieved the end of the adequate representation of the views of the electorate.

It has, on the contrary, led to the most glaring anomalies, for thereby it is not even assured that the majority party in the country will gain a majority in the Assembly, while a very large minority may be quite inadequately represented there. To quote one or two examples: in the election in the United Kingdom in 1895, in 481 contested seats 1,800,000 Unionist votes were recorded and 279 members returned, while 1,775,000 Liberal votes secured only 202 seats. Again, in 1906 the Unionists gained 44 per cent. of the votes cast, but returned only 28 per cent. of the membership of the House, and the Liberal majority, which should in strict proportion have been 68 members, was actually 256. Worse than this, this system may exclude whole areas from representation in spite of a strong minority vote. For example, in the election of which we have just spoken, Wales gave the Unionists 100,547 votes, but the Liberals gained all 34 Welsh seats, although their total vote was only 217,462. In Warwickshire the result at the same election was even more startling. Here the Unionists scored more votes (22,490) than the Liberals (22,021), and yet only one Unionist was returned as against three Liberals for the same county. The later elections in Britain tell the same story. At the General Election of 1922, for example, the Conservatives won 296 seats with 5,381,433 votes, the Labour Party 138 seats with 4,237,490 votes, and the Liberals 54 seats with 2,621,168 votes. This means that the Conservatives polled only 18,180 votes per seat, the Labour Party 30,706 votes per seat, and the

Liberals as many as 48,540 votes per seat. Again, at the General Election of 1924, the Unionists won 382 seats with 7,450,990 votes, *i.e.* 19,505 votes per seat; the Labour Party secured 142 seats with 5,483,088 votes, *i.e.* 38,613 votes per seat; and the Liberals obtained 34 seats with 3,008,097 votes, or 88,473 votes per seat. At the same election, in seven counties of Southern England the Unionists secured 84 seats with 1,456,702 votes, the Liberals one seat with 445,726, and the Labour Party no seats, though actually polling more votes than the Liberals, *viz.* 483,873. In Scotland at this election the Unionists (36 seats) secured ten more seats than the Labour Party (26 seats) while actually polling 8,755 votes less than the Labour Party (Unionists, 688,298; Labour, 697,053). Further to illustrate the chaos of electoral chances under the existing system, we may add that, while at the election of 1923 in Manchester the Unionists secured one seat with 104,027 votes, at the election of 1924 they obtained six seats with 136,195 votes, and the Liberals, having in 1923 won five seats with 71,141 votes, secured not a single seat in 1924 with 50,350 votes.

From the United States come similar illustrations of the shortcomings of the one-member constituency system. For example, in the 51st Congress "a majority of Representatives were elected by a minority of voters," for 5,348,479 Republican votes returned 164 members, while 5,502,581 Democrat votes returned only 161. In the 52nd Congressional Election, on the other hand, the Democrats registered 50·6 per cent. of the votes and yet returned 71·1 per cent. of the Representatives, while the Republicans scored 42·9 per cent. of the total votes, but only secured 26·5 per cent. of the seats in the House. At the Congressional Election of 1924 the Republicans in the State of Pennsylvania secured the whole of the 36 seats with a total poll of 1,322,070, while the Democratic Party with 481,400 votes secured no representation whatever in the House of Representatives. In the eight New England States, again, the Republican Party secured 28 Congressional seats with 1,330,585 votes, whereas the Democrats obtained only four seats with 804,473 votes. At the same election eleven

Southern States (the "Solid South") returned 76 Democratic Congressmen with 1,144,007 votes, while not a single Republican was returned, though that party's total vote reached 336,076.

All the parties in both countries are alive to the evils of this system, but how these evils are to be overcome is a matter of very high controversy. A Royal Commission on Electoral Reform sat in England in 1909-10, but the only positive recommendation for change that it made was not adopted. Later, in 1916-17, a Speaker's Conference was held, but again its recommendations were shelved. In the United States, a large and influential society has worked for the removal of the anomalies, but their efforts have never received official support or recognition. Generally speaking, the line of reform suggested is what is usually referred to as Proportional Representation, and it is, therefore, necessary to deal with this question in some detail. (19)

VI.—THE MULTI-MEMBER CONSTITUENCY

Many states have now either incorporated into their existing political systems, or made an integral part of their new-born constitutions, the electoral system called Proportional Representation. But this term means very little, taken by itself, since there are many variations of it—almost as many, in fact, as there are states which have adopted it, and many more in theory. But all the variations have at least one common factor, which is, indeed, indispensable to this method of voting; it is that no system of Proportional Representation can possibly be worked on the basis of a single-member constituency. In any constituency under a system of P.R. (the abbreviation by which it is generally known and which we shall employ henceforth) the object of a candidate is not to gain a majority, as it is ordinarily understood, but to reach what is called a *quota*, i.e. in its simplest form, a number of votes equal to the total of votes cast divided by the number of seats to be filled. The simplest form of the system is what the French call *scrutin de liste* or "general ticket" (not to be confused with the "voting by ticket" system in single-

member constituencies, which, as we have seen, obtains in the United States). By a new electoral law of 1919 in France the *Département* became the constituency where formerly the electoral area had been the *Arrondissement*. The latter was a single-member constituency. All that happened under the new law was that all the electors of a *Département* voted for as many Deputies as there were seats (*i.e.* a number equal to that of the *Arrondissements*) in the *Département*. Candidates might offer themselves singly or in combination in a list or ticket up to a number equal to the number of seats to be filled, and it was in such lists that most candidates offered themselves for election. Any candidate receiving a majority was elected, and in practice, since the average voter gave his vote to the whole list *en bloc*, this meant that the strongest party generally made a clean sweep of the whole *Département*. So far, then, the French system achieved nothing for the representation of minorities. But the law of 1919 provided also that, if an absolute majority was not obtained, the seats were to be distributed among those candidates who reached the *quota* (*i.e.* the number of votes divided by the number of seats). The share of each list was determined by the number of times the "average" (*i.e.* the aggregate vote of all its candidates divided by the number of its candidates) contained the *quota*. For example, suppose that a *Département* had a population of 450,000 and a register of 100,000 voters, that 78,000 of these actually voted, and that the constituency returned six members. Then the *quota* was 78,000 divided by six, *i.e.* 13,000. If, now, the result of the election was as follows: Radical-Socialist List, 30,000; Democratic-Republican List, 26,000; Unified Socialist List, 13,000; Republican Federation, 8,000; Others, 1,000; then the seats were assigned thus: two to the Radical-Socialists, two to the Democratic-Republicans, and one to the Unified Socialists. There was one seat still to be allotted, but as none of the other Lists had reached the *quota*, it went to the List with the highest average, namely, the Radical-Socialists who thus got three seats. But since most of the seats went by absolute majority, there was here what one authority has described as a "hybrid régime of

majority representation with a small and accidental element of proportional representation," and another as "a haphazard system evidently intended to sanction the principle of minority representation without securing its substance."

The French system was, therefore, regarded by all advocates of a true P.R. system as thoroughly bad, and it was with relief that they learned that it was not working well. After much agitation against it, the law of 1919 was repealed in July 1927, and the French reverted to the *Scrutin d'Arrondissement* or single-member constituencies.

The system more usually associated with the term P.R. is one that involves what is called the "single transferable vote," often called the Hare System because it was first suggested by an Englishman named Thomas Hare in a pamphlet entitled, "The Machinery of Representation" (1857), and expanded in his later treatise, "The Election of Representatives" (1859). Warmly endorsed by John Stuart Mill in his "Representative Government" (1861), it has been taken up and modified by later reformers. The idea in itself is very simple, once the principle of the single-member constituency is grasped. Suppose you group four existing single-member constituencies into one constituency; then, instead of having to gain an absolute majority, the candidate needs only to reach the *quota*, i.e. the number of votes cast divided by the number of seats to be filled. The voter indicates his preferences in their order. He has only one effective vote, but he may place a number against the names of other candidates besides the one he most desires to see elected, in order to indicate the candidate he would next choose, up to the number to be returned for the constituency. Thus, if there are ten candidates and four seats to be filled, the voter may place beside four of the names the numbers 1, 2, 3, 4 to express his preferences. Then, if all the seats are not filled owing to the fact that not a sufficient number of candidates reaches the *quota*, the other seats are filled by taking the second preference of the voters who have voted for the already successful candidate or candidates who therefore do not require these votes, then the third and so on until all the seats are filled. But the vote may be transferred

in another way. If a sufficient number of candidates cannot be brought up to the *quota* by transferring the surplus votes of the successful candidate or candidates to others, then the candidate with the lowest number is eliminated (or more than one if necessary) and his or their votes are added to others according to the preference expressed. So that a voter may help to get his second or third or fourth choice in, though the candidate of his first choice fails to be elected.

P.R., in some form or other, has been widely adopted in recent years. Thomas Hare himself would have turned the whole of any country into one vast constituency. But this, in the course of working out the scheme, has been abandoned as impracticable, though in a certain sense it is the principle involved in the latest electoral law in Italy, the effect of which, however, is intended by its authors to be something very different from a proportional representation of parties. In the elections in English-speaking countries which have adopted the system, the single transferable vote is, generally speaking, in use. In most Continental States, some form of vote by ticket has been adopted, so that the electors submit themselves in lists with various types of safeguard against mere majority election. In Great Britain the single transferable vote has been used for the election of Members of Parliament for certain Universities since 1918; for the National Assembly of the Church of England, for the House of Laity since 1919 and the House of Clergy since 1921; for Education Authorities in Scotland since 1918; and in Northern Ireland for both Houses of Parliament since 1920. As to the British Dominions, in the Irish Free State P.R. is in use for all elections, both state and municipal; in South Africa for Senatorial Elections and in certain municipalities; in Canada for some municipal elections; in Tasmania for the House of Assembly; in Malta for a part of the Senate and for the House of Assembly; in India for certain constituencies for the Central Legislature and for all Provincial Legislatures. In the United States the adoption of P.R. has never gone beyond one or two cities, including Cleveland (Ohio) and Cincinnati, which have thus used their wide powers of self-government.

On the Continent of Europe several states had adopted P.R. for some or all of their representative assemblies long before the War. For example, in Denmark it was first partially used for the Upper House of Parliament (*Landsting*) as long ago as 1855; in Switzerland for some Cantonal Councils in 1891; in Belgium for local government elections in 1895, and for the Chamber of Deputies and Senate in 1899; in Sweden for all elections in 1907. Denmark applied it to all elections in 1915, Holland in 1917, Switzerland in 1918, and Norway in 1919. All the post-War constitutions, with the exception of those of Hungary and Turkey, have incorporated some form of P.R.: Germany in 1919; Austria, Czecho-Slovakia and Esthonia in 1920; Poland and Jugo-Slavia in 1921; Latvia and Lithuania in 1922; and Greece in 1926. Japan adopted it in 1925.

One other principle should be mentioned in this connection, namely, what is called the Second Ballot. This is a device for securing an absolute majority. As elections come to be more keenly contested, there is a tendency for the number of political groups contesting it to increase, so that, instead of the old-fashioned duel, we often find, in a single-member constituency, a three-, four-, five-, or even six-cornered fight. If, as a result of this, no one is elected by an absolute majority, a second election is in some states held, generally between the two candidates with the highest number of votes in the first. Whenever France, for example, has reverted to the single-member constituency she has adopted the principle of the Second Ballot. But there is, indeed, nothing in the Second Ballot which cannot be secured by the transferable vote, and, in fact, there are electoral systems which secure the objects of the Second Ballot without the inconvenience of holding it. This is by means of what is generally called preferential voting. Under this system the voter states on the paper a second preference which is brought into effect if, on the first count, no candidate gains an absolute majority and if the voter's first choice is not one of the two at the top of the poll. This system obtains in Australia for Commonwealth elections and for those of some of the separate states.

In Great Britain there have been two brave attempts to concentrate the efforts of the advocates of P.R. in official commissions. The first—the Royal Commission of 1909-10—made a sole recommendation of a positive nature. It was that an alternative vote should be given on the voting-paper, not for the purposes served by the transferable vote, but to secure the objects of a Second Ballot—to wit, an absolute majority—as in the case of Australia, explained above. Yet even this ewe lamb proved to be stillborn. The second—the Speaker's Conference of 1916-17—recommended the adoption of the principle of the transferable vote, as a sort of partial “try-out,” for one-third of the seats of the House of Commons. This, too, Parliament rejected, and the only semblance of P.R. in Britain at the moment is, as we have seen, the presence of the principle of the transferable vote in University parliamentary elections, in elections for the National Assembly of the Church of England, for Education Authorities in Scotland, and for the Parliament of Northern Ireland.

VII.—PROPORTIONAL REPRESENTATION IN THEORY AND PRACTICE

There is much to be said for and against the principle of P.R. In theory it has everything in its favour; in practice not so much. There is no question that in both theory and practice a real system of P.R. does do what it sets out to do. It does undoubtedly secure the representation of minorities and it does overcome the objections which we have noted to normal majority representation. And for this reason the principle has received growing support in many constitutional states in recent years. But too often those who have adopted it merely pay lip-service to it, particularly in the case of France where it was a mere compromise to shut the mouths of its advocates, and in some states, enlarged by the fortunes of war, where it has been introduced only (it is feared) to comply with those clauses of the Treaties designed to safeguard the rights of non-national minorities.

The practical objections are many, some of little importance, some quite grave. While it secures minority representation,

P.R. is calculated to encourage what somebody has called "minority thinking" and freak candidates, which may be positively inimical to social health; if, for example, possibly sinister interests, like betting and the anti-social forms of money-lending, should gain representation through a sufficient number of interested parties getting together by the enlargement of the constituency. The enlargement of the electoral area is itself a danger, first, because it inevitably destroys personal contact between candidate or member and constituent, and secondly, because it may multiply the number of candidates to the point where the elector is embarrassed as to his preferences. (In Belgium, for example, the largest constituency returns no fewer than twenty-two members.) Thirdly, the principle of the transferable vote may be puzzling to voters, and so complicated in the process of counting votes as to place the elector at the mercy of the counting authority; but this, at any rate in countries which enjoy fairly good political health, is a mechanical objection which is removed if the authority can be absolutely trusted by the voter; and the compensating advantage is that the exercise of the single transferable vote is itself a political education, since it is impossible for the elector to state his preferences without serious reflection, whereas, faced with a choice between two candidates, he hardly needs to think at all. The old theoretical argument in favour of P.R.—that it would destroy the party "Caucuses"—is found in practice to be quite without foundation. The party machine is even stronger under such a system. The more the constituency expands the more effective becomes the impersonal "pulling of wires." This truth is very clearly seen in Italy at the moment. The gravest objection of all is that P.R. is said to lead to government instability by tending to bring to the legislature a number of small groups, rather than two massed parties in opposition, thus necessitating fragile coalition governments which fall whenever one section of opinion in them is outraged. In Belgium, for instance, the system has been worked out to such mathematical perfection that statesmen have the utmost difficulty in forming a Cabinet owing to the multifarious

interests involved and the difficulty of finding a line of common action among them.

On the other hand, it may not be a bad thing that various representative sentiments should have to be consulted in forming a ministry, and such coalition Cabinets have in some cases shown remarkable powers of survival, notably in Sweden where one ministry, after the War, maintained itself in power during a period of two or three years. This effect of P.R. has again shown the system to be well adapted to states passing through a difficult stage of transition. This has been especially the case in post-War Germany, where P.R. has perhaps saved the country from the possible evil effects of violent oscillations of opinion. It might have suffered these effects, many believe, under a one-member constituency system by bringing into power one party with an overwhelming majority, thus causing the state to leap between the extremes of social revolution and monarchical reaction. Under P.R., so its supporters assert, the ship of state has maintained an even keel, and the new Republic has thus been given time to find its sea-legs. (20)

Whether it is a good or bad thing that it should be so, it seems that P.R. must have, as its unavoidable concomitants, parliamentary groups with a consequent coalition Cabinet, rather than great parties and a homogeneous Cabinet. And this is undoubtedly the reason why it has not been adopted in Great Britain, in which the party system is so deeply rooted and which, consequently, as Disraeli once said, "hates Coalitions." It is not without significance that the two great states in the world which have not yet tried P.R., namely, the United Kingdom and the United States, are the only two where the tradition of two great parties in opposition has always been very strong, while those which have adopted it are either states like Germany which has always had a group-system in parliament, or entirely new states like Czecho-Slovakia without any such political tradition to change. It is, perhaps, the fear that the full adoption of P.R. would involve for Great Britain and the United States, not merely a change in the electoral system, but a violent breach with the Party tradition that has caused the legislatures of those states so long to hesitate to introduce it.

VIII.—PROBLEMS CONNECTED WITH THE REPRESENTATIVE SYSTEM

The problems arising out of the development of the representative principle are many. The first is that of making the number of enfranchised citizens correspond to a real embodiment of the national will. It does not necessarily follow that representative government is unreal because the principle of universal suffrage without restriction is not put into practice. Many enlightened people have held and hold that popular government does not consist in a simple counting of heads. "Equal voting," wrote John Stuart Mill in 1861, "is in principle wrong. . . . It is not useful, but hurtful, that the constitution of the country should declare ignorance to be entitled to as much political power as knowledge." Every elector, he contended, should be able to read, write, and "perform a sum in the rule of three." Universal education, he further urged, should precede universal enfranchisement; all electors should be payers of direct taxes, however small; and, finally, voting should not be secret, because secret voting violates the spirit of the suffrage, according to which the voter is a trustee for the public whose acts should be publicly known.

As we have shown in this chapter, the reforms in general since Mill's day have not at all followed the restricting lines that he laid down. On the contrary, the tendency has been all the other way—to make the franchise direct, equal and universal, to reduce or remove property qualifications, to make the ballot secret and to simplify registration. It may be admitted that in the more progressive states, such as the British Dominions, the United States, Germany, and the Scandinavian countries, Mill's educational conditions have been largely fulfilled, but a great number of European countries have instituted manhood or adult suffrage, in spite of a vast proportion of illiterates among their populations, and this is true not only of Balkan and East European countries, but of such Western states as Italy and Spain. Political Democracy is both a method of government and an attitude of mind or posture of the spirit. Those who regard it as the first, think of

the representative principle as of its very being. To those who think more of the spirit than the mechanism of it, the system of government is not of primary importance, provided it does not hinder the free play of a democratic spirit. But can that spirit be assured free play without the machinery of full representative government? In some modern states, of which we have spoken, if the people had to wait for the proper conditions of culture and stability before instituting a system of universal and equal suffrage, it is certain, they feel, that they would get neither the preliminary advantages of the one nor the ultimate benefits of the other.

Another problem that goes with the question of suffrage is that of getting candidates to stand for the office of representative who are both competent and incorruptible. Unless some means can be discovered for finding really capable persons for such work, no system of franchise, whether founded among a people largely illiterate or developed in a highly cultured nation, can be of any avail. The representative system demands from the representative or deputy a freedom to devote himself to the public service which is necessarily lacking to the ordinary citizen. In other words, the parliamentary candidate must necessarily be a "professional politician" whether he is paid for his services or not. Therefore, he may as well be paid, and almost every constitutional state to-day has adopted a scheme for the payment of its legislators. This has very considerably widened the area of choice of potential representatives, though it cannot be said to have decreased the evil influence of the party caucus which makes the existence of the best type of independent deputy very difficult. The party machine, indeed, appears to be an inevitable concomitant of the growth of political Democracy. Nor, as we have said, is its power diminished under a system of P.R.

It must not be forgotten that the *raison d'être* of a legislature is not only to reflect the opinion of the country, but to maintain good government. Schemes of electoral reform, whose object is to produce the best possible type of legislature, may therefore have to sacrifice something of the ideal electorate. The reflection of the opinions of the electorate in the legislature is only

partially feasible and not always desirable. Any conceivable system of election is at best an arbitrary attempt to approximate to a correspondence between the electors and the elected body. Government must, after all, be relative to the conditions of the society it governs, and account must always be taken of the peculiarities of the people to which it in each case applies. Nevertheless, a certain scepticism concerning the adequacy of the representative system by itself has manifested itself in some states, such as Switzerland, Germany and several of the individual states of the American Union, and this distrust of it has led to the trial of certain direct democratic checks upon its action, like the Referendum, the Initiative and the Recall, of which we shall have more to say in Part III. (21)

READING

- BAGEHOT : *English Constitution*, Essay v.
 BRYCE : *American Commonwealth*, Vol. I, Chs. xiii-xvii. *Modern Democracies*, Vol. I, Chs. iii-viii. Vol. II, Chs. xli, lxxiv-lxxv.
 BURNS : *Political Ideals*, Ch. xii.
 DICEY : *Law and Opinion*, Lecture iii, pp. 248-258. *Law of Constitution*, pp. lxii-lxv.
 GETTELL : *Readings in Political Science*, Ch. xvi.
 JENKS : *State and Nation*, pp. 288-294.
 KEITH : *Responsible Government in Dominions*, Vol. I, pp. 565-9; Vol. II, pp. 623-661, 712-14.
 LASKI : *Grammar of Politics*, Pt. I, Chs. iii and iv, pp. 311-327.
 LEACOCK : *Elements of Political Science*, pp. 209-219.
 LOWELL : *Government of England*, Vol. I, Chs. ix-xvi; Vol. II, Chs. xxxi-xxxvii. *Government and Parties*, Vol. I, pp. 14-18, 156-7, Ch. iv. Vol. II, pp. 211-14, 232-4, Ch. xiii. *Greater European Governments*, Chs. ii, iii, vii, pp. 292-300.
 MACIVER : *Modern State*, Ch. xiii.
 MARRIOTT : *English Political Institutions*, Chs. viii-x. *Mechanism of Modern State*, Vol. I, Ch. xix.
 REED : *Form and Functions of American Government*, Chs. xxi-xxii.
 SALT : *Government and Politics of France*, Ch. vi.
 SIDGWICK : *Elements of Politics*, Chs. iii, xx, xxvii, xxix.
 WILSON : *State*, pp. 35-40, 209-210.
Encyclopædia Britannica : (i) In the 11th Edition, Articles on Election (Vol. 9), Representation (Vol. 23), Woman Suffrage (Additional Vol. 32).
 (ii) In the 13th Edition, Article on Electoral Laws, Changes in (New Vol. 1).

BOOKS FOR FURTHER STUDY

BROWN : *The Meaning of Democracy.*

FINER : *The Case against P.R.*

HUMPHREYS : (1) *Proportional Representation* : (2) *Practical Aspects of Electoral Reform.*

MILL : *Representative Government.*

MUZZEY : *An American History.*

WILLIAMS : *Reform of Political Representation.*

Journal of the Proportional Representation Society.

SUBJECTS FOR ESSAYS

1. Trace the growth of political democracy in modern times.
2. "Manhood Suffrage is characteristic of Latin Europe." Discuss this statement.
3. Outline the history of political enfranchisement in Britain and show the position at the moment.
4. Explain the importance of the Nineteenth Amendment to the Constitution of the United States.
5. Define the term constituency and show how it varies in form in modern states.
6. How did the idea of Proportional Representation originate? Explain its essential features.
7. Compare the working of P.R. in France (up to 1927) with that of the same system in any other European state.
8. What are the main arguments for and against P.R.?
9. "Equal voting is in principle wrong." Discuss this dictum of John Stuart Mill's.
10. Suggest lines of reform in the British electoral system.

CHAPTER IX

THE LEGISLATURE

(2) SECOND CHAMBERS

I.—GENERAL REMARKS ON BI-CAMERAL CONSTITUTIONALISM

ANY discussion of legislatures in modern constitutional states which failed to treat of the nature of the Second Chamber or Upper House would be incomplete. It is everywhere a vital question, and in some states it is an urgent and unsolved problem. For no lesson of political history has been more deeply imbibed than that which teaches the uses of a Second Chamber. Uni-cameral constitutionalism, or government by one Chamber, is a comparatively rare, and always temporary, phenomenon in the history of great states; while bi-cameral constitutionalism, or government by two Chambers, is the method characteristic of all important states to-day. The exceptions at the moment are all states of little constitutional significance, such as the four new Baltic states—Finland, Esthonia, Latvia, and Lithuania; two Balkan states—Jugo-Slavia and Bulgaria; and Turkey. Experiments in the uni-cameral method have generally been tried during periods of revolutionary reconstruction, only to be ended, in the succeeding period of reaction or even while the revolutionary régime persisted, by the re-establishment of the Second Chamber, as was the case in England, for example, during the period of Cromwell's Protectorate.

In France, again, the Constitutions of the First and Second Republics, at the end of the eighteenth and the middle of the nineteenth centuries, were based upon the uni-cameral principle. But this was largely due to the course of the

Revolution itself which very early manifested the effecteness of the system of the Three Estates of Clergy, Nobility and Commons. Not that the French Revolution was without its theoretical arguments against more than one House. The Abbé Siéyès, the most prolific Constitution-monger of the period, who had a very great influence upon the form of the constitutional experiments connected with the first Revolution, argued that if a Second Chamber is in agreement with the first, it is superfluous, and if it is not in agreement with it, it is pernicious. Broadly speaking, this is still the contention of those who nowadays oppose the bi-cameral principle. Such opponents, however, are very rarely found among responsible statesmen. The verdict of later times is that Siéyès propounded a false dilemma, since all the great constitutions promulgated since his age have included a Second Chamber in the legislature they have established. Yet, in so far as Siéyès' criticism applies to an ancient institution which has not been remoulded to conform with the changing times, it seems to be a fair one. It should not be beyond the power of the political architect to create a Second Chamber which shall act as a court of legislative revision, provided it is given a co-ordinate authority with the Lower House. But if the selection of the members of the Upper House is beyond democratic control, then inevitably, as the claims of the electorate become more insistent, the power of such a Second Chamber will tend to decline, the co-ordinate authority will cease to exist, and abolition or reform will be demanded, for, as Goldwin Smith said, "to suppose that power will allow itself on important matters to be controlled by impotence is vain."

The arguments used in favour of Second Chambers must, therefore, be considered in conjunction with the way in which the Upper House is constituted. Those arguments are : that the existence of a Second Chamber prevents the passage of precipitate and ill-considered legislation by a single House ; that the sense of unchecked power on the part of a single Assembly, conscious of having only itself to consult, leads to abuse of power and tyranny ; that there should be a centre of resistance to the predominate power in the state at any given

moment, whether it be the people as a whole or a political party supported by a majority of voters. In the case of a federal state there is a special argument in favour of a Second Chamber which is so arranged as to embody the federal principle or to enshrine the will of the states forming the federation, the states rather than the people of the states being represented in it.

In the analysis which follows, in the remaining sections of this chapter, of the different existing types of Second Chambers, we shall note that they are variously named—in Britain the House of Lords, in Japan the House of Peers, in Switzerland the Council of States (*Ständerat*), in Germany the Council of the Reich (Reichsrat), and in most of the others the Senate. It is not, however, on the basis of nomenclature that we classify them, but rather on that of their true nature—whether they are non-elective (hereditary or nominated) or elective (partially or wholly). But this will not carry us far unless we also seek to discover, first, how far the Upper House whose selection is outside all popular control retains any real powers; secondly, to what extent the elected element in a partially elected House leavens the lump and gives it vitality; thirdly, in what manner deadlocks between the two Houses are resolved if the power of the Upper House is sufficiently real to impede the free action of the Lower; and fourthly, how the elected Second Chamber is given a dignity which does not attach to the Lower House. Our classification into two types—non-elective and elective—is, as we have said, not exhaustive, because these two types are again divisible into two. We shall therefore examine the composition and function of the Second Chambers which we have selected in the following order: Hereditary, Nominated, Partially Elected, and Fully Elected, concluding with the special cases of Switzerland and Germany.

II.—THE HOUSE OF LORDS: PAST AND PRESENT

The hereditary Upper House was formerly much more common than it is now. The hereditary Second Chamber was in most states a survival of the mediæval system of government

by Estates, of which there were generally three—Clergy, Nobility, and Commons—to which, however, a fourth, the Merchants, was in some cases added. In the course of time the Estates in most cases were gathered together in two Houses, the Upper being composed of the Lords and Higher Clergy. Several states whose legislatures were thus made up of two Houses had, under various constitutional revisions, by the end of the nineteenth century adopted either a modified form of hereditary chamber; for example, by the addition of certain members nominated for life, as was the case in Portugal from 1896 up to the Revolution of 1911 (when it became fully elective); or a fully elective Upper House, as happened in the Kingdom of the Netherlands when its Constitution was revised in 1848. There still remained certain hereditary Second Chambers, like the Austrian *Herrenhaus* and the Hungarian Table of Magnates, but these have been swept away by the War. And now the only purely hereditary Upper House of any importance left is the British House of Lords. (22)

The true origin of the House of Lords is to be found in that body of chief Barons and high Church dignitaries which met the Norman kings in council three times a year. This was known as the Great or Common Council, the latter being the name under which it is referred to, for example, in Magna Carta. In the Model Parliament of 1295 Edward I grafted on to this body two knights from every shire and elected representatives from certain cities, towns and boroughs. For a time they all sat together, but they were essentially two Houses, and what distinguished them, apart from social and official differences, was the method by which they were summoned. The Lords and Church officials were called individually ("sigillatim," as the old records have it), whereas the Commons were convoked through the Sheriffs. This last is the origin of the existing office of Returning Officer. Under Edward III they definitely took to meeting in separate Chambers. The Lords and Higher Clergy formed the House of Lords, the representatives of rural and urban areas the House of Commons, while the lower clergy, who had at first been represented in the general assembly, dropped the practice of attending altogether,

and devoted themselves to their own assembly, called Convocation, which rapidly lost any power it may have had to affect the course of secular affairs.

Since the reign of Edward I, only for one brief period in her history has England had a legislature without an Upper House. This was during the Commonwealth, immediately following the execution of Charles I in 1649. A uni-cameral experiment almost belonged to the logic of that revolution which destroyed at a blow the Crown, the House of Lords and the Episcopate. But already before Cromwell's Protectorate ended he had been persuaded to restore the House of Lords, and from that time its existence has been continuous.

Its composition has changed from time to time, as circumstances have demanded an increase or decrease in its membership. We need not stop to raise again the highly controversial, and indeed unanswerable, question, What originally gave a baron the right to sit in the House of Lords? It is sufficient to remark that in later days the conferment of a baronage necessarily bestowed the right to a seat in the Upper Chamber, and that this is still the case. Only one member of a noble family may sit in the Lords, though his sons may bear the title of barons, unless, of course, any of those sons is made a baron in his own right. And since they cannot sit in the Lords they may stand as candidates for the Commons.* On the passage of the Act of Union of 1707 sixteen Scottish peers were added to the House of Lords. It was arranged that at each new Parliament the whole body of Scottish Peers should meet and elect sixteen of their number for the duration of that Parliament. But it was further enacted by this law that no Scotsman should henceforth be created a Scottish peer, but should receive a peerage of the United Kingdom which would automatically

* A good illustration is supplied by the family of the late Marquis of Salisbury (Prime Minister of England). His eldest son was an earl, his other sons lords, e.g. Lord Hugh Cecil and Lord Robert Cecil. Only the Marquis sat in the Lords: Lord Hugh and Lord Robert were elected to the Commons. The Earl succeeded his father as Marquis of Salisbury and took his seat in the Lords. Later Lord Robert received a barony in recognition of his services to the state and went to the Lords as Lord Cecil of Chelwood, while Lord Hugh remains a member of the Commons as a representative of the University of Oxford. (23)

give him his seat in the House. As any Scottish peer was liable to be elected by his fellows for any new Parliament, it was also laid down that he could not, in any circumstances, be elected to the Commons. By the Act of Union of 1800, twenty-seven Irish lay peers, as well as four Bishops, were added. The former were to be elected by the Peers of Ireland, but in this case for life. Hence an Irish peer who had not been elected to the Lords, unlike his Scottish counterpart, was permitted to be elected to the Commons. Such a one was Lord Palmerston. These last arrangements, of course, have been undone by the establishment of the Irish Free State, but they still apply, in a modified form, to Northern Ireland. The Scottish arrangements also stand.

Besides these hereditary and elective Peers, the two Archbishops (of Canterbury and York) and twenty-four of the Bishops sit in the House of Lords by virtue of their office. Further, there is a certain number of Law Lords, or more strictly, Lords of Appeal in Ordinary, who sit as life-peers only, unless they are, beyond this *ex-officio* ennoblement, created peers in the usual way, in which case, of course, the title becomes hereditary. There is no limit to the number of hereditary peers. They can be created at will, nominally by the Crown, actually by the Ministry of the day. The normal method of creating peers is to make an announcement in an Honours List, but occasionally it is done entirely outside such customary times when special circumstances demand it. On one famous occasion in our history peers were actually created for the purpose of passing a law through the Lords. This was when the Lords refused to ratify the Treaty of Utrecht in 1713. A Tory majority passed it in the Commons, but there was a Whig majority in the Lords. To redress the balance, the Tory Ministry persuaded Queen Anne to create twelve peers and the Treaty was ratified. At two other critical moments a similar procedure was threatened—to pass the Reform Bill of 1832 and the Parliament Bill of 1911—but on both these occasions the threat was enough, and each Bill was passed by the Lords whom the brandishing of this weapon had brought to see the futility of resistance.

The powers of the House of Lords up to 1911 were theoretically co-equal with those of the Commons. At one time it was truly so. As late as 1784, for example, the Younger Pitt was the only member of the Ministry, of which he was Prime Minister, in the Commons. But even before that time the focus of power had been steadily moving away from the Lords and towards the Commons, and during the nineteenth century the bulk of the Ministry came to be drawn from the Lower House. With this development came a decline in the real powers of the Lords in legislation, though in theory they remained what they had always been. We have shown in Chapter VI how the convention that recognised the inability of the Lords either to amend or reject a money bill was rudely broken in 1909, and how, as a result, their actual inferiority was given statutory recognition by the Parliament Act of 1911, since which time no real attempt has been made to solve the problem that that Act left behind it, namely, the problem of reform.

This is not the place to attempt even to suggest the bases of such a reform. But there emerge from this brief outline of the history, composition and powers of the House of Lords, certain points which should be borne in mind when approaching it. First, the powers of the Lords, as left by the Parliament Act, may still, in certain circumstances, prove very real. The suspensive veto, which gives the Lords the right to hold up the passage of a non-money bill for two years, might easily prevent the measure passing altogether, for many changes in the Commons can occur in that time. A general election during such an interval might change the whole balance of parties in the Commons so that the measure in question would not be re-submitted to the Lords. Secondly, the House of Lords remains the final court of appeal in this country. But here, one must remember, it is, in fact, a small body of seven or eight legal specialists (generally peers only for life) who form this court, and even if an ordinary peer took upon himself to sit in such a court, he would probably be quite unable to follow the abstractions put forward in a forensic atmosphere so refined, and he is, in any case, prohibited from giving judgment.

Even if the House of Lords were abolished, the final court of appeal would remain. Thirdly, the point might be raised that, though many hereditary peers are lacking in a sense of public duty and in legislative ability, this criticism does not apply to those Commoners who are created peers as a reward for public services. Two things here should be remembered—first, though one who is created a peer is doubtless generally a man of great ability in some walk of life, it by no means follows that his *métier* is legislating. In most cases, indeed, his life will have been filled with other activities. Secondly, while it is certainly true that it is within the power of any Government to create as many peers as it likes, the title and office thereby become hereditary, and the son who inherits them may lack the ability and public spirit of his father.

Meanwhile, the truth remains that the Parliament Act has shorn the House of Lords of the substance of its power and left its composition untouched. While it remains in this indeterminate condition it satisfies no one. If its comparative impotence results in the effectual establishment of government by one Chamber, then either that is an injury to good government, in which case the Upper House should be reformed, or it is a desirable consummation, in which case the Second Chamber should be frankly abolished. But the fact that the English people have allowed themselves to drift in this compromise for so many years is a proof at once of the prevalence of the consciousness that there is a danger in the unchecked power of one House of legislature and of the existence of the feeling that “natural selection” is not a proper means of choosing the members of an effective Second Chamber.

There are at present over seven hundred members of the House of Lords. Of these the vast majority never attend its sittings except on ceremonial occasions. Honesty demands that such an intolerable state of things should be brought to an end; attachment to a bi-cameral system would point to the desirability of retaining the services of those public-spirited men who feel themselves honoured to do duty within the walls of the “other” House. Perhaps an examination of other

existing Second Chambers will help us to see how such a double aim is to be accomplished. (24)

III.—THE NOMINATED SECOND CHAMBER IN ITALY AND CANADA

The next type of Second Chamber which we must examine is that which is made up of nominated members. What most obviously distinguishes this from the hereditary type is the fact that, while the office of hereditary peer is handed down from father to son and cannot be resigned, that of nominated senator is terminable with death, or earlier if the holder of the office so desires or if the Constitution lays down some defined period of tenure. The most important fully nominated Second Chambers are those whose members hold office for life. Of such Chambers the two most interesting ones are the nominated Senates in Italy and Canada. There are several others which contain members who are nominated while others are elected. These we shall examine in the next section.

(a) *Italy*

The Senate in Italy consists exclusively of Princes of the Blood Royal and members nominated for life by the King only from certain classes, defined in the original Constitution, numbering twenty-one categories. These include Church dignitaries, deputies who have served in three parliaments or for not less than six years, persons of fame in science or literature or who have performed distinguished service for the state (*e.g.* in the army or navy), and those who pay over 3,000 lire (nominally £600) in taxes. No senator can be under forty years of age. There is no limit to the number of senators, and, since in practice the appointment is in the hands of the Ministry of the day, this power has been used on several occasions for the purely political purpose of forcing laws through the Senate. In 1890, for example, as many as seventy-five senators were appointed at one time. The Senate has the constitutional right to decide whether or not the proposed

appointee belongs to one of the specified classes. But, as may be imagined, an objection is difficult to substantiate, and it has only very rarely succeeded in preventing an appointment. Although the Italian Senate is technically co-ordinate with the Chamber and no Bill can become law without its consent, it cannot stand against the will of the Lower House, to which alone the Ministry, by the Constitution, is responsible. The method of appointment to the Senate can force that body's assent to any Bill, and lacking as it does all popular character, actually its equality with the Lower House has long since been entirely destroyed. At the moment the Italian Senate consists "one-fifth of generals, one-fifth of high officials, one-fifth of big industrialists and bankers, and one-fifth of University professors and Fascist intellectuals." It has therefore been described, by an Italian publicist, as "the ideal Chamber for a Fascist régime." In any case, it is clear that under present conditions in Italy the impotence of the Senate is greater than ever before. (25)

(b) *Canada*

The Senate in Canada is nominated by the Crown, through the Governor-General; in practice, on the advice of the Ministry of the day. But in several respects it differs widely from the nominated Senate in Italy. First, it is limited in numbers, and secondly, applying as it does to a quasi-federal and not a unitary state, there are certain territorial restrictions as to appointment of senators based upon a ratio between numbers and provinces. This nominated Senate has appeared as an element of the legislature in all the successive constitutional acts which have applied to Canada—Pitt's Act of 1791, the Canada Act of 1840, and the North America Act of 1867, under which Canada is governed to-day. By the last Act a Senate of seventy-two members was constituted—twenty-four from each of the three original provinces (the two maritime provinces for this purpose being reckoned as one). But this principle of equality has not been maintained with the expansion of the Dominion and the addition of new provinces. The Act said that when Prince Edward Island should join the federation

it should be represented by four senators, and then the other two maritime provinces should have their number changed to ten each. This has happened.

Further, by an Act of 1871, the Canadian Parliament was authorised to add senators for any new province created and added to the Dominion. Beyond this, the sole power granted to the Governor-General (*i.e.* the Ministry) is the right to add from three to six members apportioned equally to the three original provinces. In other words, six additional members may be nominated, but no more, and presumably they may be kept up to that number. The net result of these arrangements is that the Senate in the Canadian Dominion to-day consists of ninety-six members, but the numbers representative of the various provinces range from twenty-four to four. The senator is nominated for life, but under certain conditions. He must be at least thirty years of age, resident in the province for which he is appointed, a British subject, and possessed of property worth at least 4,000 dollars. (He may resign whenever he likes, and must vacate his seat if he is absent for two consecutive sessions, changes his allegiance, becomes bankrupt, is convicted of felony or ceases to be qualified.

The Senate in Canada attempts the impossible. The Constitution tried to model the Senate upon the House of Lords, adopting the principle of nomination for life in place of hereditary peerages. (At the same time, it wished to do what it could not do consistently with the system of choice by the central power, namely, to maintain the federal idea.) This can only be done on the basis of equality among the states forming the federation, each choosing its own senators. All that the Constitution achieves is that the three original provinces shall not have their membership of twenty-four each increased or decreased. But the original third province now consists of three, namely, New Brunswick, Nova Scotia, and Prince Edward Island, two of which have each ten senators and the third four, while the remaining four provinces have each four. These cross-purposes have had their effect upon the prestige of the Senate in Canada, which has neither the power which attaches to an elective Second Chamber nor the usefulness

of an Upper House which properly enshrines the federal idea. What that sort of Upper House should be, we shall see in Section V of this chapter.

IV.—THE PARTIALLY ELECTED UPPER HOUSE IN JAPAN, SPAIN AND SOUTH AFRICA

The three important examples of partially elected Upper Houses which we have here chosen exemplify various ways of introducing an admixture of elective and non-elective elements into the Second Chamber.

(a) *Japan*

The non-elected element in a partially elected Upper House may be either hereditary or nominated or may consist of both. In Japan, the Upper House is a combined hereditary, nominated and elected chamber, and, in respect of the non-hereditary portion of it, comes nearest to the type of nominated Senate which we have just examined. A part of the non-elected portion sits by hereditary right and part through the nomination of the Emperor. The rest are elected. But even in the case of these last the Emperor's approval is necessary before they can take their seats. The whole arrangement is a device to prevent too sudden a plunge from a long-standing polity into the dangers of newly granted constitutional rights, for the Japanese House of Peers has very real rights, and is in the exact sense a "court of legislative revision." By an Imperial ordinance following the grant of the Constitution in 1889, the Japanese House of Peers was to consist of the members of the Imperial family upon attaining their majority, princes and marquises at the age of twenty-five, a number of counts, viscounts, and barons, equal to one-fifth of the entire number of these three orders, elected for a term of seven years by the whole of them, the age-limit being twenty-five. Beyond these the Emperor may nominate for life any man of thirty years or more on the ground of meritorious service or his learning.

As to the elected element, the qualification is extremely

confined. One member is elected in each city and prefecture (local government unit other than a city) by and from among the fifteen male inhabitants above the age of thirty who pay the highest amount of direct taxes. When they are so elected the Emperor nominates them to sit in the House of Peers for a term of seven years. And the number so elected, together with those directly nominated by the Emperor, must not exceed the total number who sit by virtue of the title of nobility. The total number is variable and is at present between 370 and 380. The House of Peers in Japan has proved itself a highly conservative body, and is, so far, stronger than the House of Representatives. In view of the entire lack of a popular element in it, this seems strange at first, but not when we consider the extreme youth of popular political institutions in the Far East. Doubtless, with the full development of responsible government in Japan, the House of Peers will go the way of all such aristocratic bodies in a highly developed political community, and will either be reformed or become secondary to the Lower House.

(b) *Spain*

The Spanish Senate (under the Constitution of 1876 and by an additional law of 1877, both of which were in abeyance during the dictatorship of the Directory now * ended) is of special interest to Englishmen, because its composition, it has been suggested, is such as might well be imitated in a reformed House of Lords. It consists of 360 members, half of whom are senators in their own right (Princes, Grandees with a certain income, etc.), ex-officio members (Archbishops, the President of the Supreme Court, etc.), and members nominated by the Crown (*i.e.* by the Ministry) for life. The total number under these heads must never exceed 180, and the nominated members are to be drawn only from certain specified categories, as also are the remaining 180 who are to be elected. The elected senators are chosen as follows: (1) one by the clergy of each of the nine Archbishopsrics; (2) one by each of the six Royal Academies; (3) one by each of the ten Universities;

* February, 1930. See Footnote, p. 11.

(4) five by certain Economic Societies ; (5) the remaining 150 by Electoral Colleges in each province of Spain made up of representatives chosen from municipal councillors and the largest taxpayers in urban and municipal districts. The elected portion is, of course, dissolved with the Lower House whether it has run its statutory term or not. Ministers may speak in both Houses of the Spanish legislature, which gives the Senate, in normal times, a somewhat greater prestige than it would otherwise have ; but in the general discrediting which parliamentary institutions have suffered in Spain since the War, the Senate has been no more respected than the Congress of Deputies. (26)

(c) *South Africa*

Another interesting example of a partially elected Senate is that of South Africa. By the Act of 1909, which brought the present Constitution into existence in 1910, temporary arrangements were made for the first ten years, after which, unless the South African Parliament should pass an Act to alter the Constitution of the Senate (which it, in fact, has not done), the following permanent machinery was set up. The Senate consists of forty members. Eight of these are nominated by the Governor-General in Council, four especially for their knowledge of native problems. The other thirty-two members, eight from each of the four Provinces of the Union, are elected by the Provincial Council and the members of the Union House of Assembly from the province concerned acting together and on the principle of the transferable vote. The term of the Senate is normally ten years. But one of the ways, set forth in the Constitution, for ending a deadlock between the two Houses (after the passage of the first ten years) is for the Governor-General to dissolve, before the end of their statutory term, both the House of Assembly and the Senate. But this does not affect the nominated senators who hold office for ten years in any case. The Senate is a considerable force in South African politics, owing partly to the manner in which it is convened, and partly to the fact that Ministers speak in it even though they are members of the Lower Chamber.

The unitarianism of the South African polity, which we have emphasised in Chapter IV, is hereby maintained. The nomination of non-elected senators is in the hands of the central authority, and the election of the remaining senators, though actually carried out locally, is largely under the control of the centre owing to the fact that members of the House of Assembly share the voting with the Provincial Councils. And, in any case, the South African Parliament is not prevented by the Constitution from altering the method of election and composition of the Senate as it thinks fit. Thus, in the matter of the composition and powers of the Upper Chamber in South Africa, the Parliament is supreme. That this is entirely untrue of a federal state we shall now see.

V.—THE ELECTED SENATE IN A FULLY-FEDERALISED STATE : U.S.A. AND AUSTRALIA

The Senates in the two fully federalised states which we have noted earlier, namely, the United States and Australia, manifest three marked characteristics. First, the Senate in both cases is composed of members equally representative of the states forming the federal whole. This equality is an essential feature of it, since in a true federation the sovereignty which the federating units have abandoned should not be surrendered into the hands of a body outside their control or one in which the strength of any one of them is overweening. Secondly, in both cases, the senators are elected from and in the states individually and without interference from the federal authority, in a manner which combines the advantages of popular election and of state identity. And thirdly, the term of office of the senator is so determined as to ensure a continuity of life to the Senate. Such continuity is completely achieved in the United States, but not quite so completely, for reasons which we shall see in a moment, in Australia. This method of retirement of only a portion of the Senate at one time is what distinguishes the Upper from the Lower House in such states and gives the former the dignity attaching to venerability without removing it from popular contact and control.

(a) *United States*

In the United States, as we have had occasion to mention before, the Senate consists of ninety-six members (two from each of the forty-eight states). The senatorial term is six years, a third of the Senate retiring every two years. Thus, in every period of six years, any one state has two senatorial elections, *i.e.* at the end of each period of two years, and then misses one. For example, if the State of New York elected a senator in 1926 (for the Congress opening in 1927), he will not retire until 1933. Hence, if the same state also elected a senator in 1928 (for 1929), then in 1930 (for 1931) there will be no senatorial election in the State of New York. This was secured in the original Constitution by dividing the original Senate by ballot into three equal groups, the first retiring after two years, the second after four. Hence, the Senate in the United States has never been renewed at any one time to the extent of more than a third of its membership since the year 1789. It is this fact which has always given it its peculiar dignity, as it is the more recent method of popular election which gives it its great power and vitality. At first the senators were chosen by the legislature in each state, but, as we have said, by the Seventeenth Amendment (1913) popular election was introduced. The senator was never at any time, and certainly is not now, in any sense the delegate of the government of his state, but the representative (as Woodrow Wilson says) of the people of the state organised as a corporate body politic. Moreover, each senator represents his state, not in partnership, but singly, and he is expected to vote according to his own individual opinion. And this must be so, since it may easily happen that the two senators from any state, having been elected at different times, are drawn from opposing parties.

The qualifications for the office of senator in the United States are very few and simple. The candidate must have been a citizen of the United States for at least nine years, he must have reached the age of thirty, and he must be at the time of his election a resident in the state which he is chosen to represent.

The powers of the Senate are very great. Probably no Second Chamber in the world to-day has an influence so real and direct, not only in the most obviously national concerns, such as foreign affairs, but down to the very minutest business of legislation, including finance. So powerful is the Senate, indeed, that Professor Laski regards it as the *sole* effective Federal Chamber in the United States. Certainly nothing that either the Executive or the House of Representatives is legally empowered to do can modify the rights which the Senate not only constitutionally possesses, but actually enjoys. Through the standing committees into which it divides itself, it is able to cope with the multifarious questions which come before it, and to keep in touch with the executive department which, as we shall show later, works in isolation from the legislature. The most powerful of all the committees of the Senate is the Committee of Foreign Affairs, for in this department (excepting an actual declaration of war) the Senate alone ultimately controls the actions of the President. Treaties are ratified not by Congress as a whole, but by the Senate, and this is perfectly logical, for in the House of Representatives the states are represented in the most diverse proportions. At no time was the diplomatic power of the American Senate more clearly manifested than at the end of the Great War, when the work of President Wilson, who had signed at Paris all the Treaties and the Covenant of the League of Nations on behalf of the United States, was entirely undone by the action of the Senate, which unqualifiedly refused to honour the President's signature to any one of the instruments of peace.

(b) *Australia*

Like the American, the Australian Senate represents the federal idea, as may be judged from the fact that, when the Constitution was in process of being drawn up, the alternative titles suggested for the Second Chamber were the *House of the States* and the *States Assembly*. In spite of the protests of the more important states at that time, equality was secured, and so the Australian Senate is composed of six members from each

of the six states of the Commonwealth, making a total membership of thirty-six ; and it is provided in the Constitution that, though Parliament may increase or diminish the number of senators for each state, the equal representation of the states may not, by its action, be destroyed. The electorate for the Senate is precisely that for the House of Representatives, but the constituency is different, the whole state being the electoral area for senatorial elections and each voter having as many votes as there are places to be filled. The senatorial term of office is six years, half the Senate retiring every three years. But this partial retirement does not necessarily secure in Australia, as it does in the United States, a continuity of life to the Senate, because there is another stipulation in the Constitution that, in the event of a deadlock between the two Houses, the Governor-General may dissolve them both, in which case, of course, a wholly new Senate, as well as a wholly new House of Representatives, is elected. But normally, since the statutory term of the Lower House is three years, there is an election for three senators in each state simultaneously with the election of all the Representatives, who, however, are, as we have seen, elected in single-member constituencies.

The functions of the Senate in Australia are, unlike those in America, purely legislative, and it has "equal power with the House of Representatives in respect of all proposed laws," with the exception of finance bills which must originate in the Lower House and cannot be amended, though they may be rejected, by the Senate. But the Constitution contains the most stringent provisions against abuse on the part of the House of Representatives of its sole power in the passage of money bills, and the Senate can force a dissolution of both Chambers even on a question of finance. Thus, it may be confidently asserted that the Australian Senate is the most powerful Second Chamber in the British Dominions. (27)

VI.—THE ELECTED SENATE IN A UNITARY STATE : FRANCE AND
THE IRISH FREE STATE

We take the cases of the Senate in France and the Irish Free State together, as they are both interesting examples of elected Second Chambers in unitary states. Here no question concerning the composition and equal representation of areas arises, as it does in federal states. But in both these cases continuity is assured by the method of partial retirement.

(a) *France*

In France the original constitutional law concerning the Senate was in 1884 first removed from the category of constitutional law and made an ordinary law, and then replaced by another. The composition and method of election of the Senate in France now, therefore, is merely statutory, and nothing in the Constitution could now prevent its being constituted in any way that the Chambers might by statute decide upon. It is at present subject to the law passed in 1884, which is very long and detailed. The principal change brought about by it in the original law was that the National Assembly was deprived of the right it formerly had to elect a fourth of the Senate for life.

The Senate now consists of three hundred members whose term is nine years. One-third of the membership is renewed every three years. A candidate must be at least forty years of age, a French citizen, in the enjoyment of full civil and political rights, and have complied with the law regarding military service. The election of the Senate is differentiated from that of the Chamber of Deputies by the fact that the Senate is elected indirectly, by means of "electoral colleges" constituted for the purpose in the several *départements* and colonies. The college in each case is composed of the deputies from the *département*, the members of the General Council (*i.e.* the local authority) of the *département*, the members of the councils of its *arrondissements*, and delegates chosen in each *commune* from the communal councils. The numbers to be elected are apportioned on a population basis

—from the largest (*département* of the Seine) which elects ten, down to the smallest (of which there are seven, mostly colonies) which elect one. Where necessary, they shall be elected by *scrutin de liste* (i.e. by the method of proportional representation earlier described) and by an absolute majority (which may necessitate a second ballot).

The powers of the French Senate are very considerable, though not so great, perhaps, as they would be if it were elected by popular vote, and yet greater, doubtless, than they would have been if the old law had not been repealed. In all matters, except finance, the Senate is on a footing of equality with the Chamber of Deputies. It has frequently forced the resignation of a ministry, though (in spite of the fact that ministers may speak in either House) it is hardly regarded as incumbent upon a Cabinet to seek the Senate's vote of confidence or to resign on account of the lack of one. No dissolution of the Chamber of Deputies before the expiration of its statutory term can take place without the consent of the Senate. This places both the President and the Lower House entirely at its mercy, and, in certain conceivable circumstances, this might prove an extremely effective weapon. But not for almost fifty years has such a measure been seriously proposed in France.

(b) *The Irish Free State*

In the Irish Free State the Senate is composed of sixty members, holding office for twelve years, a fourth of them retiring every three years. They are directly elected, on the principle of proportional representation, the whole state forming one electoral area. But the nomination of candidates is placed under certain very stringent conditions. The Constitution lays down that only those citizens are eligible who, having reached the age of thirty-five, have done honour to the nation or, by virtue of special qualifications or attainments, represent important aspects of the nation's life. Before each election a panel of nominees is formed consisting of three times as many qualified persons as members to be elected. Two-thirds of these are nominated by Dail Eireann (House of Commons) and a third by the Senate, voting by proportional representation.

To this panel is added any former or retiring member of the Senate who notifies in writing to the Prime Minister his desire to stand.

This scheme strikes one at first as a little too academic. But it is, at least, a good attempt to obtain the advantage of popular election while hedging the Senate about with a certain atmosphere of distinction. Time alone can tell whether the atmosphere will prove too rarefied for political vitality. If it does so prove, then either the Irish Free State will have in effect a uni-cameral legislature, or it will remould the Senate to a pattern more in keeping with the true needs of bi-cameral constitutionalism. At present the powers of the Irish Senate are shadowy in the extreme. In the matter of money bills it is quite powerless, and with regard to non-money bills all it possesses is a suspensive veto of two hundred and seventy days, which is very short compared with the statutory term of the Dail, namely, four-years unless previously dissolved. (28)

VII.—THE SPECIAL CASES OF SWITZERLAND AND GERMANY

We conclude our survey of Second Chambers with a brief examination of the Second Chamber in Switzerland and Germany. Although Switzerland and Germany are, like the United States and Australia, federal states, the Upper House in their case is different in form and function from that in the states we earlier examined. Not only that, but they are unlike each other in both these respects. In Switzerland the Upper House is called the *Ständerat* (Council of States), and in Germany the *Reichsrat* (Council of the Empire), which was formerly known as the *Bundesrat* (Council of the Bund or League). Neither of these names is appropriate to the Assembly to which it refers, for the German Upper House is much more truly a Council of the States than is the Swiss, and in pre-War days was even more so. In one respect, however, the Swiss Upper House resembles that in the United States and Australia, for in it the cantons (*i.e.* states) are equally represented. It consists of two members from each of nineteen cantons and one member from each of the half-

cantons into which the remainder of the twenty-two are divided (having, consequently, a total membership of forty-four). The German Reichsrat, on the other hand, shows the greatest diversity of representation from the various republics of the Reich (the number of members varies from nineteen to one), being based upon the proportion of one member per million (or surplus part of a million) of population.

(a) *Switzerland*

Though the Swiss Council of States resembles the American and Australian Senates in the respect that all the cantons have an equal voice therein, it is like them in no other. The Constitution leaves every detail of the election and term of service of the member to the cantons themselves. Thus from some cantons members are sent for one year, from others for two years, from others for three, and from yet others for four. In most of the cantons the members are now popularly elected, but in seven they are chosen by the legislative body of the canton. But the Council of States, as Woodrow Wilson says, "can hardly be called the federal chamber; neither is it merely a second chamber. Its position is anomalous." For if it were a truly federal chamber, part of its business would be to safeguard state interests in the hands of the authority to which they have sacrificed their sovereignty, and if it were a normal Second Chamber it would have certain defined functions of legislative revision or veto.

In fact, however, the two Houses in Switzerland are co-ordinate in all respects. The initiation of legislative proposals is shared between them by arrangement made between their respective presidents at the beginning of each parliamentary session. The Ministers, as we shall show later, are responsible to, and may vote in, neither House, but must answer questions put to them equally in both. Finally, for certain (not abnormal) purposes the two Houses sit together and vote as one Chamber. Thus the Swiss Legislature, like the Swiss Executive, is unique; it is the only legislature in the world the functions of whose Upper House are in no way differentiated from those of the Lower. Anything that comes

within the competence of the Federal Legislature requires the concurrence of both Houses, but both the federal organs of government—~~executive and legislative~~—may be reduced to an equality of subordination to the national will through the instrument of the Referendum, a matter we shall discuss more fully in a later chapter.

(b) *Germany*

The German Constitution of 1919 categorically states in its Sixtieth Article that "A Reichsrat is formed in order to represent the German States in the legislation and administration of the Reich." The states, it further says, are represented in the Reichsrat by members of their Governments. This is a survival of the system obtaining under the old Empire; but whereas in those days the Bundesrat was the real organ of legislation, the situation is now completely reversed and the Reichsrat is entirely overshadowed by the Reichstag. The Reichsrat has no power to initiate legislation. This belongs alone to the Executive and the Reichstag. Nor is the consent of the Reichsrat required for the passage of legislation, though its consent is necessary for the introduction of any Bill in the Reichstag by the Government. Nevertheless, the Reichsrat has an important and peculiar veto. If it objects to any Bill passed by the Reichstag it must lodge an objection with the Government within two weeks of the final vote in the Lower Chamber. If then the Houses cannot agree, the President may order a Referendum on the bill in question. If he does not do this within three months, and if the Reichstag votes again in favour of the Bill by a two-thirds majority (of the whole House), the President must either promulgate the law or order an appeal to the people.

Thus, while the German Reichsrat is definitely representative of the point of view of the individual states, it lacks the power it formerly had of giving the individual state an effective voice. And, while it fails to embody the safeguarding principle of federalism—that the states shall be equally represented in the Upper House—it is yet disarmed from acting to the detriment either of the smaller states through

the preponderating influence of the larger ones, or of the Reich as a whole by virtue of a strength superior to that of the House which is popularly elected. At the same time, by the power which is given it to force either the consent of a vast, and often unobtainable, majority of the popular Chamber to a Bill to which it objects, or else an appeal to the people themselves, it at once assumes the dignity proper to a Second Chamber and vouchsafes to the sovereign people the ultimate control of their own representatives. (29)

VIII.—CONCLUSIONS

This somewhat exhaustive, and perhaps exhausting, analysis has none the less been of a very summary character, for many points of interest have been necessarily omitted. The object has been to direct the attention of the student to those outstanding matters which emphasise the constitutional and the real (as distinct from the nominal) functions of those Second Chambers which are worthy of examination. The conclusions which seem to emerge from such an analysis are : ✓ first, that no great state to-day is satisfied with a uni-cameral legislature ; secondly, ✓ that the more the choosing of the Second Chamber is out of popular control, the more it tends to become detached from the realities of politics and thus to lose vitality ; thirdly, that when this is the case, there is a consciousness, not that the Second Chamber should be allowed to fall into desuetude, but that it should be made alive again by reform ; and fourthly, that a Second Chamber with real powers is vital to the successful working of a federal system. These questions are surely of great interest to any student of comparative politics ; they are even more worthy the attention of Englishmen who are now again faced with the reform of the House of Lords as a living issue.

READING

BAGEHOT : *English Constitution*, Essay x.

BRYCE : *American Commonwealth*, Vol. I, Chs. x-xii and xviii. *Modern Democracies*, Vol. I, Ch. xix and pp. 385-393, 514-518 ; Vol. II, pp. 63-6, 203-6, Chs. lvi, lxiv.

- GETTELL : *Readings in Political Science*, Ch. xviii, Sect. ii.
 JENKS : *Government of British Empire*, Chs. vi-vii.
 KEITH : *Responsible Government in Dominions*, Vol. I, Pt. iii, Chs. vii-viii.
 LASKI : *Grammar of Politics*, pp. 328-355.
 LEACOCK : *Elements of Political Science*, pp. 152-166.
 LOWELL : *Government of England*, Vol. I, Chs. xxi-xxii. *Government and Parties*, Vol. I, pp. 19-26, 154-5, Ch. ii ; Vol. II, pp. 208-210.
 MARRIOTT : *English Political Institutions*, Chs. vi-vii. *Mechanism of Modern State*, Vol. I, Chs. xiv-xv.
 PORRITT : *Evolution of Dominion of Canada*, Ch. xi.
 REED : *Form and Functions of American Government*, Chs. v-vii.
 SAIT : *Government and Politics of France*, Ch. v.
 SIDGWICK : *Elements of Politics*, Ch. xxiii.
 WILSON : *State*, pp. 153-4, 212-6, 251-260, 325-6, 351-361, 410-412, 433-4, 448-455.

BOOKS FOR FURTHER STUDY

- LEES-SMITH : *Second Chambers in Theory and Practice*.
 MARRIOTT : *Second Chambers*.
 TEMPERLEY : *Senates and Second Chambers*.

SUBJECTS FOR ESSAYS

1. What is the importance of the bi-cameral legislative system in the modern world ?
2. "To suppose that power will allow itself on important matters to be controlled by impotence is vain." Do you consider that the modern history of Second Chambers justifies this conclusion of Goldwin Smith ?
3. Trace the history of the British House of Lords and explain its existing powers.
4. Compare the constitution of the nominated Senate in Italy with that in Canada.
5. Of what value to an Englishman is the study of the composition of the Senate in Spain ?
6. What is the significance of the presence of eight nominated senators in the South African legislature ?
7. What justification is there for the statement that the Senate in the United States is the most powerful Second Chamber in the world ?
8. Compare and contrast the composition and powers of the Senate in Australia with that in the Irish Free State.
9. Explain the system of indirect election of senators which obtains in France. What changes have been brought about in the constitution of the Senate since the promulgation of the Constitution of 1875 ?
10. "The German Upper House is much more truly a Council of States than is the Swiss." Elucidate this statement.

CHAPTER X

THE PARLIAMENTARY EXECUTIVE

I.—THE EXECUTIVE : APPARENT AND REAL

IN spite of the vast importance of the legislative function in modern government, it tends to be overshadowed by the executive; first, because modern executive business is concerned not only with executing laws, but also, in many cases, with initiating policy to be sanctioned by the legislature; and secondly, because the mass of collectivist legislation, of which we spoke before, is so great that, though the legislature may control the passage of the laws, it is bound to leave a wide discretionary power in the hands of those who execute them. Thus the growth of democracy has produced in modern constitutional states this paradox—that the greater the volume of legislation passed by the legislature elected by the people whose needs require it, the greater the area of uncontrolled executive power in the prosecution of the laws so made.

The executive, then, is in many respects the most important department of government in the modern constitutional state; and while constitutionalism, which, as we have insisted, sought to define the powers of government and protect the rights of the governed, has defined the executive branch, and confined it within proper limits, on the other hand, the growth of democracy has greatly multiplied executive duties and the number of officers and departments to discharge them. The powers of the executive in the normal constitutional state to-day may be summarised as follows:

(i) Diplomatic power—relating to the conduct of foreign affairs.

(ii) Administrative power—relating to the execution of the laws and the administration of the government.

(iii) Military power—relating to the organisation of the armed forces and the conduct of war.

(iv) Judicial power—relating to the granting of pardons, reprieves, etc., to those convicted of crime.

(v) Legislative power—relating to the drafting of bills and directing their passage into law.

As we have pointed out earlier, the term executive is used in two senses. In the first, the broader sense, it means the whole body of the civil service, of the police, and even of the armed forces. In the second, and narrower sense, it signifies the supreme head of the executive department. It is with the executive in this latter sense that this and the next chapter will be concerned. We must be careful here not to be misled by mere nomenclature, by virtue of which executives are often divided into two classes, hereditary and elected, on the basis of which classification, states are divided into monarchies and republics. For this, as we have said in Chapter III, may tell us nothing. We must go farther and ask, Is the hereditary executive and the elected executive real or only nominal? Now, among pre-War Western states of any account, only two—Germany and Russia—had real hereditary executives. And of these Germany, though the more democratic in appearance, was the more autocratic in actuality, for, in practice, the German Emperor was far more uncontrolled than the Russian. The pre-War Russian executive would be better described as bureaucratic than autocratic, for, though there was no democracy in Russia, the Czar was surrounded by a number of officials who held the true executive power. But both these hereditary executives have disappeared, and it is just to say that in the Western World to-day, though there remain nominal hereditary executives, nowhere do we find a real hereditary executive.

But there is a further fact to observe, namely, that even the elected executives may hide their true nature beneath an outward form, and just as in all Western monarchies to-day the monarch is nowhere the real executive, so also in some republics

the president is not the real, but only the nominal executive. In existing constitutional states there are only two possible sorts of executive—using the term in its narrower sense, as referring to the supreme head of the executive department. One is the sort that is controlled by parliament, the parliamentary executive; the other is the type that is outside parliamentary control, the non-parliamentary or fixed executive. It is necessary that the student should not allow himself to be misled by the mere *form* of the executive, judged by the tradition or name of the state, but should look more deeply into the actual working of the executive to discover to which of these two types it in reality belongs.

II.—THE THEORY OF THE SEPARATION OF POWERS

The existence of the three departments of government—legislative, executive, and judicial—is due to a normal process of specialisation of function, a phenomenon to be observed in all branches of thought and action as civilisation advances, as its mass of information increases, and as its organs grow ever more and more complex. Originally the king was the lawgiver, the executor of the law and the judge. But inevitably there grew a tendency to delegate these powers of monarchy, and the tripartite division resulted. This process does not involve a division of the sovereign power: it is merely a convenient means of coping with the increasing business of the state. The specialisation of function was a simple need, and the consequent delegation was a simple fact. But as the king's power came to be checked and constitutional ideas came into prominence, this simple fact became a theory, a theory that the basis of liberty lay in not only the convenient specialisation of these functions, but their absolute distinction in different hands. It is this accident of reading into a normal piece of governmental evolution a theory of liberty and rights which has given a strange twist to certain constitutions and made the modern difference between parliamentary and non-parliamentary executives.

The strangest thing about the emergence of this theory of

the separation of powers is that it was first propounded as being the peculiar virtue in the stability of the British Constitution, of which it is absolutely untrue and to which it does not in the least apply. It appeared first in Montesquieu's *Esprit des Loix*, published in 1748, in which the author attempts to abstract, so to speak, the quintessence of the British Constitution. His conclusion was that "when the legislative and executive powers are united in the same person or body of persons there can be no liberty, because of the danger that the same monarch or senate should enact tyrannical laws and execute them in a tyrannical manner." Nor was this peculiar view of the English Constitution confined to this French thinker, for nearly twenty years later, the English jurist, Blackstone, in his *Commentaries on the Laws of England* (1765) expressed himself on the same point in almost identical terms. "Wherever," he says, "the right of making and enforcing the law is vested in the same man or one and the same body of men, there can be no public liberty."

This view became a definite part of the political philosophy of the later eighteenth century, and was incorporated in the French constitutions of the Revolutionary epoch. The doctrine of Montesquieu and Blackstone was also adopted and put into practice by the Fathers of the American Constitution, since they naturally believed, at this time, that they were imitating the best feature of the British Constitution. The system of the existing executive in England had not developed fully at that time, and has now passed beyond the possibility of such an interpretation of its secret strength. But it was none the less a misconception of the spirit which was informing its evolution even then. Yet such was the hold that this theory gained that it was not until 1867, when Walter Bagehot's great book, *The English Constitution*, appeared, that it was finally consigned to limbo.

Now, in no constitutional state is it true that the legislative and executive functions are in precisely the same hands, for, as we have said earlier, the executive must always be a smaller body than the legislature. But it is not to this distinction that the theory of the separation of powers points. The application

of the theory means not only that the executive shall not be the same body as the legislature, but that these two bodies shall be utterly isolated from each other, so that the one shall have no control over the other. Any state which has adopted and maintained this doctrine in practice in its full force has an executive entirely beyond the control of the legislature.* Such an executive we call non-parliamentary or fixed. This type of executive still exists in the United States, whose Constitution has not been altered in this particular since its inception. But France, which, as we have said, applied the doctrine in its first constitutions born of the Revolution, has now adopted the British executive system. That system is one in which a cabinet of ministers is dependent for its existence on the legislature of which it is a part, the members of the executive being also members of the legislature.

This system, generally known as the Cabinet System, has been, in its broad features, adopted by most European states, and it matters not at all whether they are called monarchies or republics. It has also been adopted in the Self-Governing Dominions of the British Crown. The non-parliamentary system, on the other hand, is peculiar to the United States and those South American Republics which have founded their constitutions upon that of their great neighbour. In this and the next chapter it is proposed to examine some of the foremost states of the modern world from the point of view of their executive systems. Our purpose is to discover whether the system in any given case is parliamentary or non-parliamentary, though there are one or two indeterminate examples which we shall also observe.

III.—THE HISTORY AND PRESENT FORM OF THE CABINET SYSTEM IN BRITAIN

The history of the growth of the Cabinet system in Britain is one of the most instructive studies in the whole realm of the science of government. This system, which has been imitated and incorporated in the documentary constitutions of all the principal states of Europe, in the Self-Governing Dominions,

and even in Japan, is utterly unknown to English Law. (In no legal document, statutory or otherwise, do we find it referred to.) It is, in fact, a part of that great customary or conventional element in the British Constitution. To know something of the history of this strange phenomenon, exemplifying as it does the strength of custom and the imitative faculty of political man, is, therefore, incumbent upon the general student of comparative politics no less than upon the British citizen.

The emergence of the modern British Cabinet is generally associated with the ascendancy of the Whigs under Walpole (1721-42), but, though it is true that it assumed at that time the definite features which have since, with very slight intermissions, characterised it, we have to look farther back than that period for its true origin. We pointed out in the last section that in early political society the king was the lawgiver, the executor of the law, and the judge—in other words, that in his office he combined all three departments of state: legislative, executive, and judicial. Under William I, in England, the Great Council was organised to assist the King in this triple duty. This body of barons was the basis of our modern institutions, for from it has sprung by almost imperceptible stages of modification and growth, the whole effective organisation of the present government of Britain—Parliament, Cabinet and Law Courts. But the Great Council normally met only three times a year, and naturally there evolved from it a special group in constant session, made up of certain high officers of state—the Archbishops of Canterbury and York the Justiciar, Treasurer, Chancellor, etc. This was called the Permanent Council. But this, in its turn, became too unwieldy for the purpose of intimate relations with the King, and in the reign of Henry VI (1422-1461) it was virtually superseded by yet another inner circle of councillors, called the Privy Council, which now became the chief executive body of the realm.

Under the Tudors, the Council was remoulded and assumed vast arbitrary powers, and its exercise of them became even more tyrannical as its effective strength passed to yet another inner circle of itself with the increasing size of the Privy Council. This special "interior council," as Macaulay calls

it, met the King not in the usual council chamber, but in a "cabinet" or smaller room set apart for the purpose. It had reached this point by the reign of Charles I (1625-1649). If now we can show that the prerogatives of the Crown passed at last into the hands of Parliament, we shall also show how it was that the executive in England ultimately became a parliamentary one. This tremendous transition was effected, broadly speaking, in three stages. The first was the Great Rebellion under Charles I, which broke out in 1642. To prove how the question of the responsibility of ministers to Parliament was involved in this struggle, we have only to quote a passage from a document presented to the King in the preceding year, namely, the Grand Remonstrance, one of the many attempts to stave off an armed conflict. It begged that :

"Your Majesty will vouchsafe to employ such persons in your great and public affairs, and to take such to be near you in places of trust, as *your Parliament may have cause to confide in.*"

Though Parliament won and the King was executed, the Restoration of the Monarchy under his son Charles II, saw a reversion to some of the old abuses, and the second stage in the development of the existing executive system was reached in the Revolution of 1688. By the reigns of William III (1689-1702) and Anne (1702-1714), the Cabinet, though still unknown to law, had, in fact, become "the sole supreme consultative council and executive authority in the state." But the monarch was still the chairman of this body. It required but one more turn of the wheels of chance to place it beyond the King's power altogether and to put at its head a minister, the Prime Minister. This was effected by the accident of the Hanoverian Succession on the death of Anne. Sacrificing nationality to religion, the English people preferred a German Protestant to an English Catholic (the son of James II). George I and George II were unable to speak English, and therefore dropped altogether the practice of attending Cabinet Councils, whose chairmanship then passed to the chief minister.

To trace the development of the Cabinet, therefore, is not the same thing as to trace the growth of the office of Prime

Minister. Under Walpole, however, the two developments coincided, Under him those characteristics which mark the Cabinet to-day definitely emerged, and after a period of vagueness following his fall in 1742 and the consequent weakening of the Whig power, of which George III took advantage to attempt the restoration of the royal prerogative, the Cabinet towards the close of the eighteenth century took that shape again permanently. H. D. Traill has summarised the political conception of the Cabinet as a body necessarily consisting :

“(a) of members of the Legislature,

“(b) of the same political views, and chosen from the party possessing a majority in the House of Commons,

“(c) prosecuting a concerted policy,

“(d) under a common responsibility to be signified by collective resignation in the event of parliamentary censure ; and

“(e) acknowledging a common subordination to one chief minister.”

These characteristics may be further summarised as homogeneity, solidarity, and common loyalty to a chief.

The essence of this executive system is that, in last analysis, the Cabinet is a committee of Parliament, tending to be, with the advance of democracy, a committee of the House of Commons. The historical development of the sway of Parliament over the executive has been associated with the growth of the party system. And neither of these growths has anything to do with the law of the Constitution. As we have said, the Cabinet, as such, is nowhere mentioned in the laws of this land, and no man can be a member of the Cabinet without being a member of the Privy Council, out of which, as we have shown, the Cabinet evolved. The abuse of the Privy Council by the King was the real cause of the growth of a Cabinet of ministers responsible to Parliament. Far from liberty being assured, as Montesquieu and Blackstone had asserted, by the utter separateness of the legislative and executive functions, our history has shown that liberty is secured rather by their intimate association. For a brief period in our history the statute law went against the whole spirit of this customary development of our Constitution. A clause in the Act of

Settlement of 1701 stated that no office-holders should sit in the House of Commons. Six years later this clause was repealed, but neither at the time that this was incorporated into the law, nor when it was repealed, could statesmen have realised its full bearing on the future of the mechanism of government. The Cabinet emerged while still the royal prerogative had not been wholly demolished, and the purpose of the clause in the Act of Settlement was to restore executive functions to the larger body, the Privy Council. It was supposed that by withdrawing members of the Council from the Commons the king's power of intrigue through a corrupt parliamentary system would be reduced. As it was, the repealing Act—the Place Act of 1707—saved the Constitution from this unrealised peril, but left the clause operative in certain directions. First, a member of the House of Commons before taking up office must seek re-election. This, with some limits as to time, still holds and gives the control of the selection of Cabinet Ministers into the hands rather of the electorate than of Parliament. Secondly, part of what remained of the clause secures that no office-holder shall be in a position to hold government contracts, so that a Cabinet Minister must resign all active interest in any company concerned in such contracts. Thirdly, the clause still applies to the permanent Civil Service, no member of which can sit in Parliament.

The Privy Council remains in law, but it has no political force whatever. (As we have said, a member of the Cabinet must be sworn of the Privy Council on taking up office, but once a member of the latter, always a member.) So that the Privy Council consists not only of existing ministers, but of all ex-ministers, among others, and is therefore a very large body of men each with the title Right Honourable. Thus, in this respect, the law of England tells us nothing of the facts of the government of England. (And just as the Cabinet is unknown to law, so is the office of Prime Minister.) Not one penny of public funds goes in salary to the Prime Minister as such. He receives a salary by virtue of holding a sinecure, generally the First Lordship of the Treasury, an office of which the salary has remained without its duties.

The Cabinet in Britain is, therefore, dependent upon the good opinion of Parliament which, under modern conditions, means the confidence of the House of Commons. (This implies that the ultimate control is in the hands of the electorate. (As Walter Bagehot acutely pointed out, the Cabinet is a creature, but, unlike all other creatures, it has the power of destroying its creator, *i.e.* the House of Commons.) (For if the Cabinet is defeated in the Commons it can, instead of resigning, advise the King to dissolve the Assembly upon which it depends. Then the electorate decides whether the party from which the appealing Cabinet is drawn shall return with a majority or not. From this it is seen how vitally the stability of Cabinet government depends upon the party system.) At those times in our history when the Government has had to depend upon the help of other sections of the House outside its own party, its tenure has always been insecure, as was proved, for example, in the case of the Labour Government in England in 1924. That Labour Cabinet had not a majority in the Commons, and its tenure depended entirely upon the goodwill of the other two parties in the House. It was also the case with some earlier Liberal Administrations, especially that of 1910, when the late Lord Oxford (then Mr. Asquith) had to look to the support of the Irish and Labour parties to maintain his ascendancy over the Conservatives.

(If it is the party system which gives the Cabinet its homogeneity, it is the position of the Prime Minister which gives it solidarity.) Indeed, in essence, the Cabinet in England is much more the rule of one man than that of a committee.) He must face the House with a united Cabinet. But that united front depends upon him.) The ministers come into and go out of office together.) But if there is dissension in the Cabinet the Prime Minister has it in his power either to force the resignation of the dissentients individually or himself to resign with the whole body of ministers.) It is in this way that the party system is inextricably interwoven with the Cabinet system in England. In those states where the Cabinet system has been adopted without a strong party system from which it draws its strength—namely, a solid majority to back it in the

elected assembly—the Government is never so stable, and what is called a Cabinet crisis is much more frequent than in England, as is notably the case in France.)

To summarise, the noteworthy aspects of the British executive system are that it is dependent for its existence upon the support of the majority in the elected Chamber, that it is drawn from one party (except occasionally at times of national crisis), that the position of the Prime Minister gives it solidarity, that neither the Cabinet nor the office of Premier is known to the law, that the body known to the law, namely, the Privy Council, to which all Cabinet Ministers past and present belong, has no real political significance left. This development has destroyed absolutely the ancient prerogatives of the Crown, which have passed, together with the whole of the executive power, into the control of the Legislature. This system has been transplanted to soils which had not been prepared so long to receive and mature it, and it is interesting to note one or two examples of states where this has been carried out, as we shall do in the succeeding sections of this chapter. (30)

IV.—RESPONSIBLE GOVERNMENT IN THE BRITISH SELF-GOVERNING DOMINIONS

A Self-Governing Dominion is one which has responsible government, and what is called responsible government is in practice nothing more nor less than the application of the Cabinet system to colonies where the executive function was formerly in the hands of the Imperial Government. For responsible government means not only that the Dominion to which it applies shall enjoy a liberty of legislation where its own interests are concerned, but that its executive shall be controlled directly and absolutely by the chosen representatives of the people. Thus, what has happened in each Self-Governing Dominion is exactly what happened in the Mother Country itself, except that the development took place over a much shorter space of time. Under the earlier dispensation—generally referred to as the Old Colonial System—the

Governor-General of the colony represented the King, *i.e.* the British Government. But just as the King's actual political power at home was at first checked and finally destroyed by the growth of a Cabinet of ministers responsible to Parliament, so in the Colonies the power of the Governor-General (representing an external Dominion) was destroyed by his being forced to choose his counsellors from the majority party in the elected assembly. When this was achieved, the executive power passed, *ipso facto*, out of the hands of the British Government into those of the Dominion itself.

This way of solving the stormy problem of a continued connection between Britain and her Colonies has gone very much farther than its inventors intended. Its inception followed the rebellions of 1837 in Canada, after which Lord Durham was sent thither as Governor-General with the special duty of reporting upon the state of the country and of making proposals for its future government. His Report of 1839 is a great landmark in British Imperial history, for it did nothing less than make the movement for responsible government possible. But Durham had attempted to distinguish between local and imperial questions with regard to the executive function, and he earmarked certain matters which should be permanently reserved to the Mother Country. Later history has justified the doubts of many worthy people in England at that time as to whether the maintenance of this distinction was possible, and their conviction that a time would come when all powers should pass to the Dominion. But far from being a reason, as those critics would have had it, for shelving Durham's report, it has justified its adoption abundantly; for responsible government, once conceived as practical politics, made possible all those developments of unfettered power on the part of the Colonies which have been the sole means of keeping the Empire intact.

The Canada Act of 1840 did not establish the Cabinet system in Canada, but it made possible its growth through the statesmanship of the successors of Durham in the office of Governor-General, especially Lord Sydenham and Lord Elgin. It gradually became the practice of these officers to choose the

executive council from members of the legislature who were the political party in the majority in the Lower Chamber. And so successful was this policy, in spite of the efforts of the Home Government to retard its development by appointing reactionary Governors-General, that by 1849, Lord John Russell, then British Prime Minister, was able to say in the House of Commons :

“ If the present Ministry in Canada are sustained by popular opinion and by the assembly, they will remain in office. If, on the contrary, the opinion of the province is adverse to them, the governor-general will take other advisers, and will act strictly in accordance with the rule that has been adopted here.”

This attitude was endorsed by majorities in both Commons and Lords, and from that time there has never been any question as to the right of Canada to control her executive by her legislature. The Act of 1867 establishing the Dominion of Canada assumed the existence of the Cabinet system when it stated in its eleventh article that “ There shall be a Council to aid and advise in the Government of Canada to be styled the Queen’s Privy Council of Canada.” The word “ Cabinet ” is not mentioned in the Canadian Constitution any more than in British law.

Meanwhile, the principle of responsible government had been granted in 1850 to New South Wales, Tasmania, New Zealand, and Cape Colony. Then as each other colony reached the stage at which it could be safely entrusted with its own affairs it was granted responsible government, the very latest case being that of Southern Rhodesia. Thus, when the time came for the establishment of the Commonwealth of Australia and the Union of South Africa, Cabinet government, having been already adopted in the previously separate units, became an essential part of the executive arrangements under the new Act in each case. The Commonwealth Act says, in Article 64 :

“ After the first general election no Minister of State shall hold office for a longer period than three months, unless he is or becomes a Senator or a member of the House of Representatives.”

Similarly the South African Act states, in Article 14 :

“ After the first general election of members of the House of Assembly, no minister shall hold office for a longer period than three months unless he is or becomes a member of either House of Parliament.”

In the last important example of the grant of Dominion Status, that of the Irish Free State, the Constitution clearly states the meaning of such a grant. Article 51 of the Irish Free State Constitution Act (1922) so completely illustrates the full meaning of Cabinet government in the Dominions that it is worth while to quote it in full :

“ The Executive Authority of the Irish Free State is hereby declared to be vested in the King, and shall be exercisable, in accordance with the law, practice and constitutional usage governing the exercise of the Executive Authority in the case of the Dominion of Canada, by the Representative of the Crown. There shall be a council to aid and advise in the government of the Irish Free State to be styled the Executive Council. The Executive Council shall be responsible to the Dail Eireann (Chamber of Deputies), and shall consist of not more than seven and not less than five Ministers appointed by the Representative of the Crown on the nomination of the President of the Executive Council.”

In each of these cases, then, a Cabinet system is fully recognised, and in the case of Ireland the power of the Prime Minister (President of the Executive Council) is categorically established.

As a result of the Imperial Conference of 1926, the Governor-General in a Dominion has ceased to represent the British Government (conceived as the Cabinet) and become the representative of the King. This change left the Home Government without even a channel of communication in any of the Self-Governing Dominions and has necessitated the appointment of an official in each case who acts as a liaison officer between the Government at home and that of the Dominion to which he is appointed. In Canada, for example, this official is known as “ High Commissioner in Canada for His Majesty’s Government in Great Britain.” Thus has the Mother Country been deprived of even the semblance of

executive control in the Dominions, and responsible government been made complete. It is difficult to conceive what other executive system was possible in the case of the Colonies consistently with the independence of the Dominions and the perpetuation of the moral bond with the Mother Country simultaneously. For, if the real executive were outside instead of within the control of parliament in a Dominion, then either the Governor-General would be the supreme executive, in which case there would be no independence, or there would be no Governor-General, in which case the moral bond with the Mother Country would be completely severed. (31)

The adoption of the Cabinet system in Continental countries has quite a different history from that in the case of Britain and the Dominions. Into two important examples of the system on the Continent we must now inquire.

V.—THE CABINET IN THE THIRD FRENCH REPUBLIC

If the student fails to grasp the significance of Cabinet government in France he misses the whole meaning of the Republic in that country. "There is," wrote Sir Henry Maine, "no living functionary who occupies a more pitiable position than a French President. The old kings of France reigned and governed. The constitutional king, according to M. Thiers, reigns, but does not govern. The President of the United States governs, but he does not reign. It has been reserved for the President of the French Republic neither to reign nor yet to govern." Allowing for a little hyperbole here on the part of a fierce anti-democrat, we may judge this statement to be substantially true. Does it not seem, one may ask, somewhat illogical to select a man presumably fitted for the task of government and then to leave the effective business of government to somebody else? For it is true that the nominal executive in France, namely, the President, is not the real executive at all. The real executive is the Cabinet, with a Prime Minister at its head, which is responsible to the elected Chambers. The circumstances in which the Third Republic was established fully account for this, at first sight, strange

anomaly, which has assuredly been justified by the fact that the period of constitutional stability, which it has made possible, has been more than twice as long (up to the moment) as that of any other régime since the first Revolution.

We have noted in Chapter VII that the Third Republic was established as a compromise between competing monarchist factions. Yet the peculiar parliamentary régime which they established, hoping for its transitoriness, has been the most effective preventive of a revival of monarchical institutions. If the monarchists could not settle their differences except by abandoning their principles in 1875, still less have they been able since to fix upon a candidate for the throne. As time has gone on, the qualifications for kingship of the heirs of Bourbon and Orleans have become perceptibly weaker, while the Bonaparte family practically disappeared with the death of the Prince Imperial in 1879. The object of the French monarchists, therefore, has been in more recent years to discredit the parliamentary system, and to establish a monarchy upon the basis of a plebiscite, a method of choice so closely associated with the Bonapartes. Their efforts brought about a fearful crisis in France in 1886, when an army officer named Boulanger seemed to promise the desired re-establishment of the plebiscitary Empire. He was utterly crushed by the forces of the Republic, and the episode remains a standing proof of the value in France of an executive dependent upon Parliament.

Here, then, we have a President elected for seven years, not by the people but by the two Houses of the French Parliament sitting together as a National Assembly at Versailles. He cannot act in any executive matter except through his Ministers, who must, by the Constitution, countersign his every decree. In spite of a long array of powers with which the Constitution accredits the President, it states categorically (Article 6 of the Constitutional Law of February 25) that he shall be "responsible" only in the case of High Treason. There is, indeed, a Council of Ministers of which the President is head, but as this Council is responsible to the Chambers it becomes a Cabinet Council of which the Prime Minister is head.

Thus, as a great French writer has said, the President is "the prisoner of the Ministry and of Parliament." He is exactly in the position of a constitutional king. "He is a titular executive, nominally endowed with large powers and really restrained from employing them by the action of a responsible parliamentary cabinet." He is not a hereditary officer, but, that does not change his true legal status. He is, in short, "a constitutional king for seven years."

The Cabinet in France is, in several respects, different from the Cabinet in Britain. The law does not say that ministers shall be members of either House, but in practice they are, because they have, in any case, the right and, indeed, the need, to speak in either House, and in forming his Cabinet the Premier has to consider the value of the political weight of his colleagues. Secondly, the Constitution provides that ministers shall be collectively responsible to the Chambers for the general policy of the Government and individually for their personal acts. This would appear to open an avenue to divided counsels, but, in practice, the Cabinet works as a body and comes as a whole to the rescue of a minister individually attacked in the Chambers. Thirdly, the position of the Premier in France is somewhat different from that of his counterpart in Britain. He can appoint and dismiss ministers, but, in fact, he must go warily because of the peculiar group-system in France. There is no party strong enough to form a majority in the Chambers. It is therefore dependent for its continuance upon the support of a coalition of parliamentary groups. The Prime Minister gets their support while he does not outrage the opinions of any section of them. He is therefore in perpetual dread lest he should overstep the narrow area thus marked out for him; and this is the reason why a change of ministry is much more frequent in France than in this country.

This question of Cabinet crises requires a little elucidation. In Britain and the Dominions a Cabinet crisis is generally associated with a dissolution, for a Cabinet defeated in the Commons either resigns or advises the King to dissolve the House of Commons. If it resigns, then the new Cabinet generally fails to gain sufficient support from the existing

House of Commons, and is then forced to dissolve. The decision then rests with the electorate. Very seldom in Britain does a Parliament last out its statutory term. For, in time, an administration begins to lose hold, bye-elections go against it, and it dissolves Parliament before things get worse. Now, in France they order things quite differently. The statutory life of a Parliament in France is four years, and the Constitution allows for an earlier dissolution by the President with the consent of the Senate. But only once in the history of the Third Republic has this expedient of earlier dissolution been resorted to. This was in 1877 under the Presidency of McMahon. This was regarded as an anti-Republican trick, an intrigue between Senate and President to get behind Parliament; in other words, to undermine the Republic, as constituted two years earlier, and to establish a plebiscitary system. So discredited was this device in the eyes of good republicans that it has never been employed since. Even during the recent storms connected with France's financial difficulties, it has been mooted only to be argued away.

All that happens in France when a ministry resigns is that a re-grouping takes place in order to obtain the support of a majority in the Chamber, and we therefore frequently find a politician who held a portfolio in the Cabinet just resigned taking up another in the new one. If France were involved in the turmoils of a General Election every time a French Cabinet fell to pieces owing to the alienation of one of the parliamentary groups represented in it, democracy would there long since have broken down. But this fragile group-system, on which Cabinet government in France is based, leads to many abuses and tends to discredit the system of parliamentary executive in France. Not being founded firmly, as in England, its original home, upon a true party system, the Cabinet is formed, and maintained, in France by the distribution of government favours, and the Prime Minister is constantly preoccupied with recruiting friends thereby, to save himself from the crisis which ever hovers over him like the boulder in Virgil's Hades. The strongest criticism perhaps that can be brought against the French Cabinet system is the alarming

fact that the average life of a Cabinet since the foundation of the Third Republic is only ten months.

VI.—THE NEW GERMAN CABINET SYSTEM

The Cabinet system has not been in existence long enough in Germany to judge of its suitability to the new conditions in that country, but the most interesting thing about it is that it should have been adopted as part of the general machinery for establishing a truer democracy in Germany than ever existed before. We have already, in Chapter V, briefly indicated the occasion of its essential beginnings, namely, in the real crisis of the Great War, when President Wilson asked Germany for an assurance that in opening negotiations with her government he was dealing with a body representative of the German people. This movement actually began before the abdication of the Kaiser at the end of November, 1918. In September of that fateful year Prince Maximilian of Baden became Imperial Chancellor and started a series of concessions in the direction of responsible government, making it possible for the Chancellor to work in co-operation with a committee of the Reichstag, which hitherto had had no control over the executive. But internal discontent, combined with the disasters of the closing days of the War, proved this effort towards preserving the old imperium tempered by a progressive limitation of its prerogatives, to be too late, and a parliamentary executive was not properly established until the revolution of the Spartacists was overthrown and milder counsels prevailed, allowing a constituent assembly to draw up the Constitution in 1919.

As a republic, Germany is in many respects differently constituted from France. For, while the French President is elected for seven years by the Chambers sitting together, the German President is elected, albeit for the same period, by the vote of the people, all of whom, of either sex of twenty years or more, are, by the same Constitution, enfranchised. The President is eligible for re-election for a further term, or he may, before the expiration of the period, be removed from

office by the vote of the people on a motion of the Reichstag passed by a two-thirds majority. If then the popular vote goes against the Reichstag, that vote accomplishes two things. It achieves first a re-election of the President and secondly a dissolution of the Reichstag.

The German Constitution, like the French, sets out a long array of powers belonging to the President, but in practice he cannot exert them because the Federal Chancellor and his Cabinet are made responsible for all acts. The parliamentary nature of the executive is very clearly established by certain clauses in the Constitution. Thus Article 50 says that all orders and decrees of the President require the counter-signature of a minister, which counter-signature implies responsibility. Article 54 states that "the Chancellor of the Federation and the Federal Ministers require, for the administration of their office, the confidence of the Reichstag. Any one of them must resign, should the confidence of the House be withdrawn by an express resolution." Articles 55 and 56 emphasise the Cabinet system and the office of Prime Minister (*i.e.* Federal Chancellor) by saying that the Federal Chancellor presides over the Federal Government and directs its business, and that he determines the main lines of policy for which he is responsible to the Reichstag. Finally, the Reichstag, by Article 59, is entitled to arraign any or all of the members of the Federal Executive, including the President of the Republic, before the Supreme Court of the Republic, for "culpable violation of the Federal Constitution, or of a Federal law."

Thus, the President of the German Republic occupies (according to the argument of Maine) an even more "pitiable position" than does the President of the French, for the nominal executive in Germany is doubly checked, first by a popular election and secondly by the presence of a Cabinet responsible to the assembly, itself popularly elected. What an enormous change, then, has come about in Germany through the break-up of the old Imperial power resultant upon the War! Until the changes of 1918 the Emperor was both the nominal and the real executive. His chief minister, the Imperial Chancellor, was responsible to him alone, and nothing

that the Reichstag was enabled by the old Constitution to do could disturb him. Now, not only has the hereditary Emperor with real executive powers been replaced by an elected President with only nominal ones, but the Imperial Chancellor, instead of being the direct servant of the Emperor, removable at his pleasure, has become the servant of the elected Chamber, the Reichstag, which has thus acquired a real political force, whereas formerly it existed merely as an advisory body, notwithstanding that it was elected upon a very broad franchise.

Thus the German Republic takes its place among the progressive constitutional states of the West—so far as a paper Constitution can assist it to that position. There are many traditions and interests in Germany to-day working against the stabilisation of the new régime, and many honest people who doubt that such a political system, in which an elected parliament is supreme, is suited to Germany's peculiarities. Time alone will tell. But, meanwhile, one may confidently assert that Germany has now the substance of a democratic machinery, where formerly she had but the shadow. (32)

VII.—THE CABINET SYSTEM AS ADOPTED IN SOME POST-WAR EUROPEAN STATES

As we have said, the Cabinet system has become characteristic of most European states. This was true before the War, but it is even more so now, since there is hardly a state in Central Europe which, having been affected in its size or political organisation by the War, has not followed in some form or other this plan of executive organisation. Whether we consider the more important new states, such as Poland, Jugo-Slavia, and Czecho-Slovakia, or the comparatively small and unimportant ones, such as Latvia, Esthonia, and Lithuania, we observe this same phenomenon. Indeed, the only post-War state which has not modelled itself upon this plan is Russia, and that is a special case outside the limits of constitutionalism. All these new, enlarged, or decreased states in Central Europe are republics, with the exception of Bulgaria, Rumania, and

Jugo-Slavia, the last two of which, having been on the side of the victors in the War, and thus having avoided the more profound political upheavals which were common to all the vanquished states, have retained their hereditary monarchies.

But in these cases, as in those with which we have dealt more fully, it is not possible properly to comprehend the true nature of their executive organisation merely by referring to them as monarchies or republics. The question we must again ask is whether either the hereditary executive in the one case or the elected executive in the other is the real executive. And we find that in no case is it the real executive. In the case of Rumania the old pre-War Constitution continues to apply to the enlarged state with its hereditary monarch whose acts are actually performed by a Cabinet of ministers responsible to the elected assembly. In the case of Jugo-Slavia, the Kingdom of the Serbs, Croats, and Slovenes, as we have seen in Chapter IV, a new Constitution was drawn up by a constituent assembly in 1920 and became operative in 1921. But in some respects it is not really a new Constitution at all; nothing more than an extension of the original Constitution of Servia of 1886 which was re-enacted in 1903. Article 47 states simply that "executive power is administered by the King through his responsible ministers." Here, then, we have a normal example of Cabinet government under a constitutional monarch.

In the case of the new republics, four are of interest: namely, Austria, Czecho-Slovakia, Poland, and Finland. In the case of Austria the Constitution of 1920 was drawn up by a constituent assembly which looked to the ultimate incorporation of the new Austria into the new German Federal Republic. Meanwhile, their Constitution was to apply to eight provinces themselves forming a quasi-federal state. Since the Peace Treaties prohibited the incorporation of Austria in Germany, the Austrian Constitution of 1920 has ceased to have a merely provisional character. The President is elected, as in France but for a period of only four years, by the two Houses (the *Nationalrat* and the *Bundesrat*) in joint session. He actually performs certain important executive functions, the rest of

which are discharged by a federal ministry deliberately elected by the Lower House (*Nationalrat*). Thus, if this House withdraws its confidence from the minister or the ministry as a whole, he or it must immediately resign and a new ministerial election take place.

In Czecho-Slovakia the President is elected for seven years by the Chamber of Deputies and Senate in joint session, provided that an absolute majority of both Houses is present and that the candidate secures a three-fifths majority. The President cannot submit himself for a second term of office, though this proviso was not to apply to the first President, Masaryk, whose venerability and services to his country marked him out for the signal honour of the possibility of holding the office for life. There is a Prime Minister and Cabinet which is responsible to the Chamber of Deputies. But an interesting safeguard against government instability is introduced by Articles 75 and 76 of the Constitution of February 1920. These articles state that a vote of "no confidence" in the Ministry by the Chamber of Deputies shall be valid only when more than half the members are present, if there is a 50 per cent. majority, and if the vote is taken by roll call. Further, such a motion for a vote of "no confidence" must be signed by not less than a hundred deputies before it may be introduced. The object of this elaborate scheme is, obviously, to save the government from overthrow by merely factious attacks during the critical early days of the Czecho-Slovakian Republic.

Again, in the case of Poland the President is elected for seven years by the two Houses sitting together. Article 43 of the Constitution of 1921 states that the President exercises the executive power through ministers responsible to the Lower House, and the ministers, it adds, are responsible not only for the acts of the President, but for those also of the subordinates whom he appoints. In Poland, however, a tendency to the establishment of military dictatorships has manifested itself during the last two or three years, and in this way the Constitution has been brought into disrepute.

In Finland the Constitution of July 1919 is really an

elaboration of the Law of 1906 which established in that country, while still under the sovereignty of Russia, a representative legislature. By new clauses, grafted on to this constitutional document, the President is popularly, but not directly, elected (though the first President was elected by the Chamber). The permanent plan adopted follows the system laid down in the Constitution of the United States, where, however, it is not in practice any longer carried out. The people, says Article 23 of the Finnish Constitution, shall elect three hundred Presidential Electors, and the right to vote for these shall be the same as that for members of the Chamber of Deputies, namely, by universal adult suffrage and under a system of P.R. The voting of the three hundred shall be secret, and if no candidate for the Presidency secures more than half the votes cast, there shall be a second ballot, and if, as a result of this, no one gains an absolute majority, the two candidates with the highest number of votes shall be voted for again. The President thus elected has certain real powers, but most of his acts, to be valid, require the counter-signature of a minister who must be a member of the Council of State, or Cabinet, which must enjoy the confidence of the elected Chamber (Articles 36 and 43). In cases of conflict between the President and the Council of State, the latter has the final decision, so long as it is thus acting within the terms of the Constitution which is ultimately to be interpreted by a Supreme Court of Law.

Thus in the new states of Europe we find the adoption of the Cabinet system in some form or other to be universal. Whether such a system, requiring as it does for its proper working a highly developed political sense, if not indeed a long political experience, is to prove successful in all these cases, only time can tell. These states, doubtless, are destined to pass through many shocks, both internal and external, to which the aftermath of the War is likely to subject them, and it is extremely improbable that they will be able to do so without resort to methods of violence. But such methods would be utterly inconsistent with the principle of a parliamentary executive. In any case, citizenship under the new régime in such states

as Poland and Finland must surely be a happier thing than it was under the old tyranny from which the people of these countries have been liberated by the War. (33)

READING

- BAGEHOT : *English Constitution*, Essays i, vi-ix.
 BRYCE : *Modern Democracies*, Vol. I, Ch. xxi, pp. 535-8 ; Vol. II, Chs. xlviii, lx.
 DICEY : *Law of Constitution*, Ch. xi.
 GETTELL : *Readings in Political Science*, Ch. xix.
 JENKINS : *Government of British Empire*, Chs. v, ix, x, pp. 64-70.
 KEITH : *Responsible Government in the Dominions*, Vol. I, Pt. ii, Ch. vii ; Vol. II, pp. 621-3, 710-12.
 LASKI : *Grammar of Politics*, pp. 295-303, 356-410.
 LEACOCK : *Elements of Political Science*, Pt. II, Chs. i, iii.
 LOWELL : *Government of England*, Vol. I, Chs. i-viii and xvii-xviii. *Government and Parties*, Vol. I, pp. 26-34, 161-7. *Greater European Governments*, Ch. i, pp. 287-292.
 MARRIOTT : *English Political Institutions*, Chs. iii-v. *Mechanism of the Modern State*, Vol. I, Ch. xiii ; Vol. II, Chs. xxiii-xxx.
 SAIT : *Government and Politics of France*, Chs. ii-iv.
 SIDGWICK : *Elements of Politics*, Chs. xxi, xxii.
 WILSON : *State*, pp. 155-162, 181-206, 262-3, 425.

BOOKS FOR FURTHER STUDY

- KEITH : *Dominion Home Rule in Practice*.
 LOWELL : *Essays on Government*.

SUBJECTS FOR ESSAYS

1. "The great overruling power in every free community." Discuss this description of the legislature as compared with the executive in the modern state.
2. Distinguish between nominal and real executives, whether hereditary or elective.
3. Discuss the theory of the "Separation of Powers" and show its influence on the development of the executive in modern states.
4. What are the essential characteristics of a parliamentary executive ?
5. Trace the growth of the Cabinet system in Great Britain.
6. Summarise the main features of British Cabinet government as it exists to-day.
7. Explain the significance of the application of the principle of Cabinet government to the British Dominions.
8. What part is played by the Cabinet in the executive system of the French Republic ?
9. What differences have been introduced in German methods of government by the adoption of the Cabinet system ?
10. Give some examples of new States in Europe which have adopted Cabinet government as their executive system.

CHAPTER XI

THE NON-PARLIAMENTARY OR FIXED EXECUTIVE

I.—GENERAL CONCEPTION OF THE DEMOCRATIC VALUE OF A FIXED EXECUTIVE

UNLESS carefully watched, the terms Cabinet and Presidential Government may be misleading. As we have already shown, an elected President may not be the real executive, and in that case the executive is actually in the hands of a Cabinet, with a Prime Minister at its head, responsible to Parliament. But again, Cabinet government does not necessarily mean the rule of a body as opposed to the rule of one man. As we pointed out, the Cabinet in England is virtually controlled by the Prime Minister, and beyond the necessity that all members of his Cabinet must sit in one or other of the Houses of Parliament, and that they will naturally be members of his party, there is no restriction upon his choice. Furthermore, Presidential Government also involves a body of ministers which, in the United States at any rate, is, in fact, known as the President's Cabinet. It is very difficult, of course, to achieve a diffusion of executive power among a body of men. The whole trend of executive power is towards concentration in the hands of one, and a mere elective system is no guarantee that it will be diffused. In England, for instance, since it is the practice that the very great majority of the members of the Cabinet shall be members of the House of Commons (only two or three nowadays sitting in the Lords), it follows that the Cabinet is largely made up of representatives of the people. And yet it is by no means an *ad hoc* elected body. In this respect, then,

Cabinet and Presidential Government or parliamentary and non-parliamentary executives may be alike. There are cases of republics—Switzerland and the new Austria, for example—where the executive is actually elected by the legislature, but such election is obviously not an inherent characteristic of either a parliamentary or a fixed executive.

The only sort of truly fixed executive is that which is either a real hereditary executive or an elected executive unmovable by the action of the legislature. Hence it follows that a fixed executive is not necessarily democratic. But since in the post-War Western world there no longer exists an example of a real hereditary executive, we are driven to examine the fixed executive conceived as a democratic device. The most important case of this is the executive of the United States, but it has been copied in most cases in Central and South American states, and may therefore be said to be common to the American Continent, if we exclude Canada. The important point to observe about an elected executive which is real is that the elected person is in fact what he is in name. There is no case where the elected real executive becomes a parliamentary executive (though Turkey now offers an apparent rebuttal of this absolute statement), just as there is no case where an executive which arises out of a body of men elected to the legislature is other than a parliamentary executive. For if the executive is elected as such, then it is either the executive without the interference of the legislature, in which case it is non-parliamentary or fixed, or else it is not the executive at all in fact, and the real executive power is in the hands of an individual or a body of men responsible to the assembly.

The democratic value which is conceived to lie in this fixed executive is traceable back to the old theory of the separation of powers. The argument runs that, if a president is popularly elected to perform executive functions, he should not be subject to limitation in his executive acts by a body elected for another purpose. It is only in theory that such an absolute division of functions is possible, for, after all, part of the work of the executive is concerned with the execution of the decrees of the legislative power. But where the

executive is non-parliamentary, what the constitution states as belonging to the executive branch really does belong to the office of the person elected to carry it out, whereas, where the executive is a parliamentary one the powers stated in the constitution as belonging to the executive power do not in fact belong to the person elected to execute them.

The constitutions that we are now to examine from this point of view vary very considerably. The first—that of the United States—is a true case of a fixed executive. The second—that of Switzerland—offers an example quite unique among the constitutional systems of the world, having an executive which is in appearance a parliamentary one, but, in practice, shows the separation of functions. In the third—that of Italy—we are to analyse recent tendencies towards a fixed executive in a state whose Constitution deliberately lays down the parliamentary nature of that executive. As to the fourth—that of the new Turkish Republic—this offers a new type of executive which appears to combine the characteristics of both the parliamentary and fixed types.

II.—APPLICATION OF THE PRINCIPLE IN THE UNITED STATES

The principle of the non-parliamentary or fixed executive is most perfectly illustrated in the case of the United States of America. The Fathers of the Constitution applied, to its extreme practical limit, the conception of the independence of the executive from the legislature. Although in one important particular, which we shall note in a moment, the machinery which they originally set up has been considerably modified in its working by custom and practice, the principle of separation remains intact. The Constitution says that "the executive power shall be vested in a President of the United States of America" and that "he shall hold his office during the term of four years . . . together with the Vice-President chosen for the same term." The original arrangements for the election of these two officers were laid down in Article 2, Section 1, of the Constitution, but were superseded in 1804 by the Twelfth Amendment which, instead of making Vice-

President that candidate who secured the next highest number of votes to the President, caused two distinct ballots to be taken, one for each office.

As we stated in Chapter III, the elaborate arrangements detailed in the original clause and in the amendment have fallen into complete desuetude, and the intentions of the founders to keep the election free from direct popular influences have been utterly foiled. The Constitution says that electors shall be chosen in each state to a number equal to the number of members of the House of Representatives and of the Senate for that state ; in other words, equal to the state's representation in Congress. These electors shall meet in each state and nominate and cast votes for Presidential and Vice-Presidential candidates. When they have so chosen, they shall send the names with the votes recorded for each to the President of the Senate who, in the presence of both Houses of Congress, shall unseal and count the votes.

This does not happen at all in practice. In fact, the two occasions on which Washington (the first President) was elected were the only times that it occurred. Since then the growth of party conventions has made the election of the President entirely popular. What happens, in fact, is that the various parties hold meetings long before the date fixed for elections and each select a candidate for each office. When, therefore, the people in each state elect electors, they know for which Presidential and Vice-Presidential candidate they are voting, and hence the meeting of those electors afterwards is a mere form. The candidate for each office for whom a majority of votes is cast in any one state is the candidate for that state, and therefore scores as many electoral votes as there are members of Congress from that state, quite irrespectively of the largeness or smallness of the majority ; for, under this system of electing electors, all the voters in a state have as many votes as there are electors to be elected in that state. Thus the whole state, in this case, is the constituency, and electors are elected *en bloc* according to the candidate they are pledged to vote for.

Two examples will make the practical working of the plan clear. Let us take a state with a large population, New York,

and one with a small population, Maine, and suppose that the Presidential candidates are A and B, and the Vice-Presidential candidates X and Y. The State of New York has approximately nine million inhabitants, and returns forty-three members to the House of Representatives, and therefore elects forty-five Presidential Electors (adding two for its senatorial representation); the State of Maine has a population of approximately three-quarters of a million and therefore elects six Presidential Electors. Now, if a majority of the voting portion of the nine millions in New York State vote for A as President and X as Vice-President, then A and X carry all the forty-five votes for New York State as Presidential and Vice-Presidential candidates respectively. Similarly, if a majority of the voting portion of Maine's three-quarters of a million inhabitants vote for B as President and Y as Vice-President, then B and Y carry all the six votes for the State of Maine as Presidential and Vice-Presidential candidates respectively. But from this it is not difficult to realise how much more important it is for a Presidential candidate to carry the large than the small states. It would be possible, indeed, for a candidate to carry the eleven smallest states in the Union and still be outvoted by the candidate who carries New York. This particular arrangement often has the effect of showing a marked discrepancy between the total of original popular votes recorded and the final result. President Lincoln, for example, was elected in 1860 by 180 electoral votes to 123 recorded by his three opponents, but the people who voted for those electors who stood for him numbered 1,860,000, while those who voted for his opponents numbered 2,810,000. In other words, he was the choice of only 40 per cent. of the voters of the country. President Wilson, again, in 1912 obtained 435 electoral votes to his three opponents' 96 combined, but his popular vote was 6,298,859 to his opponents' 8,511,312. In the Presidential Election of 1928 the figures were even more remarkable, for in this case there was a straight fight between two candidates. While Mr. Hoover's electoral vote was 444 (40 states) to Governor Smith's 87 (8 states), the figures for the popular vote were: Hoover, about 21,000,000;

Smith, over 16,000,000, and while Mr. Hoover's electoral vote was the greatest ever gained by any party in the history of the United States, Governor Smith's popular vote was the greatest ever gained by his party. (34)

None the less, it remains the fact that the President in the United States is now popularly elected (that is, directly instead of indirectly, as was the intention of the Fathers of the Constitution), but this is the only case among the foremost states of the world in which the President at the same time is popularly elected and is the real executive. These two facts in combination make inevitable a non-parliamentary executive, for if Congress could remove the President at will (which it can only do through impeachment), the electoral machinery would be utterly unreal, whether in its original form as stated in the Constitution or in the popular form it has in practice assumed.

The powers of the President are very real, though the exercise of them varies greatly with the personality of the President, and in times of crisis they can become greater still. While it is his business to execute the laws passed by Congress, he can and does influence the actions of Congress in its legislation. First, he delivers to Congress an Annual Message, either in person or through a deputy who reads it. But he may call Congress together for the purpose of delivering a message more often if he considers that the gravity of circumstances demands it. This right can have a tremendous bearing upon the course of legislation, especially if used by an orator who chooses to address Congress in person, as, for example, did the late President Wilson. Secondly, the President can get a member of Congress to embody his ideas on a certain subject in a bill. But it must be clearly remembered that neither the President nor any of his ministers is allowed to take part in the business of either the Senate or the House of Representatives, and therefore the power of the President to influence Congress is largely conditioned by the state of parties in the Houses. While the President is elected every four years, the House of Representatives and a third of the Senate are elected every two. So that, while it is probable that the wave of favour towards a certain party which has brought a particular man into the

Presidential Chair will also bring him a majority in the Houses, it may well be that, at the next Congressional election, the President, who has still two years to run, will lose this backing.*

But then the President has an important power at the other end of the legislative process, which may easily neutralise the effects of a minority of his party in the Houses. After a bill has passed both Houses, it cannot become law until the President has signed it. This signature he may refuse (he must notify his refusal within ten days), and if he does, the bill must go back to the Houses and be passed in each by a clear two-thirds majority. Such a majority, as may be imagined, is very difficult to achieve unless the President's party is hopelessly outnumbered. In practice, a bill vetoed by the President seldom gains the necessary majority afterwards, and so the President's veto is a very potent weapon in his hands.

Further than this, the President is Commander-in-Chief of the Army and Navy; he has the function of making all the important appointments in the federal government; and the conduct of foreign affairs is in his hands, though the Senate may refuse its assent to certain appointments, and a treaty made by the President requires the ratification of two-thirds of the Senate. Finally, the power to declare war belongs to Congress as a whole, but clearly executive action may bring negotiation to such a pass as to make war almost inevitable.

Thus, though relations exist in the United States between the Executive and Legislature, the intimacy of which varies with party strength and the personality of the President, the two powers are quite distinct, and it is safe to say that in no constitutional state in the world to-day (with the possible exceptions of post-War Italy and Turkey) does there exist an officer with such vast powers as those of the President of the American Union. If he proposes to seek re-election, he is, of course, subject, as the time approaches, to the great party caucuses which control the politics of America, but no more so than any other politician in the country. But actually, during

* This is exactly what happened as a result of the Congressional Election of 1926.

his four years of office, so long as he does not act unconstitutionally, his power remains unchecked, except in the ways we have mentioned, and his position unchallenged. And if, at the last, public opinion is with him, he may frequently prevail over the opposition even of an antipathetic Congress. (35)

III.—THE PECULIAR EXECUTIVE OF THE SWISS CONFEDERATION

'No executive system in the world is so deserving of attention as that of Switzerland, for the founders of the Swiss Constitutions of 1848 and 1874 would appear to have succeeded in a project which has baffled the ingenuity of all previous statesmanship, and especially that of France, namely, to combine the merits and exclude the defects of both the parliamentary and the non-parliamentary executive systems. The Swiss executive, the Federal Council, is a ministry elected, but not dismissible, by each Federal Assembly. The actual Swiss executive thus resembles at the same time both the nominal and real executive of France; for, like the French President, the Swiss Federal Council is elected by the legislature, and, like the French Cabinet, it is the real executive. But again, in its immovability over a certain period, once chosen by the Assembly, it resembles the American Presidency.'

Who, then, is the President of the Swiss Republic? The answer is, there is no such person because there is no such office. The Swiss Federal Council is a body of seven ministers elected by the two houses of the legislature—the National Council and the Council of States—sitting together to form a National Assembly. They are elected at the beginning of each new National Council for the duration of that assembly, namely, three years. This is an attempt to secure an executive power diffused or dispersed among a body of men, as distinct from such a power concentrated in the hands of one. And the attempt appears to be successful; for, in the strictest sense of the term, these seven hold the power equally among them. But because there are certain duties, such as receiving foreign potentates and ministers, that it is manifestly impossible for seven men to perform simultaneously, one of the seven is

chosen by the National Assembly to act as Chairman of the Council for one year only. Swiss democracy insists upon the principle of rotation, and no man is allowed to hold the chairmanship for two years in succession. He gets a salary equal to about £60 a year more than each of the other six during his year of office. This Chairman of the Federal Council of Ministers is often thought of as the President of the Republic, but his precedence over the rest is "a merely formal precedence : he is in no sense the Chief Executive."

Thus the Swiss Council of Ministers is, at first sight, a parliamentary executive in a very emphatic sense. But, if we look more deeply into its working, we find that it turns out in practice to be fixed. The seven members of the Council elected by the House need not be members of one of these Houses before being chosen, though they generally are, but, if they are, as soon as they are elected to the Council they must resign their seat in the Chamber. In other words, the election to a place in the executive involves the resignation of the legislative function. The members of the Council at the expiration of their three-year term are frequently re-elected, and some of them have held office successively for as long as fifteen years.

But in the matter of the relationship between the executive and the legislature, Swiss practice offers a strong contrast to the American. Whereas in the United States the only contact between executive and legislature is through the President's messages, and none of his ministers is allowed in either House of the Legislature, in Switzerland the ministers, as heads of departments, may attend the sittings of either House, and may take part freely in debate. And, indeed, Parliament looks to them for guidance in its business of passing laws. Nevertheless, the ministers are not the leaders of the Houses, but their servants. The Ministry has no partisan character ; it stands outside party ; it does not do party work ; and it does not determine the policy of the various parties in the Houses. Its business is purely administrative, being concerned chiefly with such federal affairs as the collection of national revenue and the management of national undertakings, such as railways.

✓ The most remarkable feature about the Executive in Switzerland is its stability. As we have said, though the Houses elect the ministers, they cannot dismiss them within the term of the Lower House, and, further, it is the common practice to re-elect them if they desire it. If the National Council is dissolved before the end of its normal three-year term, the first business of the new one and of the Council of States is to elect the Federal Council, but in practice this generally means re-electing the members of the last one. Thus the Federal Council has a permanence and stability far more like that which characterises a fixed executive, such as that of the United States, than that which characterises Cabinet government as it exists, for example, in Britain and France. ✓ And yet, though it is elected by Parliament, it is more permanent even than the executive of the United States. ✓ Dicey, indeed, likens the Swiss Federal Council to a board of directors of a joint-stock company, and adds that there is no more reason for altering its composition if it is doing its work efficiently in the general interest than there is to alter the membership of such a board under similar circumstances.

It is said that the only serious reform in the executive department suggested in Switzerland is that the election of the ministers should be taken out of the hands of the National Assembly and placed in those of the people. If this were to happen, the only reason which we now have for calling the Swiss executive a parliamentary one would disappear, for it would in that case become, to all intents and purposes, a fixed executive in the American sense, except that the austere republicanism of Switzerland would retain the diffused character of its executive and popularly elect a body instead of an individual to whom the choice of his cabinet is left. So, while the semi-parliamentary executive which the founders of the Third French Republic wished to establish has turned out to be a parliamentary executive of a very extreme type, the parliamentary executive which the Swiss Constitution contemplates is found on examination to be more fixed and non-parliamentary in its working than any other in Europe.

IV.—POST-WAR TENDENCIES IN ITALY

The parliamentary nature of the executive in Italy is clearly laid down in the original Constitution of 1848. Article 65 says that the King appoints and dismisses ministers, but Article 67 states that the ministers are responsible to Parliament and that no laws or governmental acts shall take effect until they have received the signature of a minister. Article 66 says that ministers shall have no vote in either House (*i.e.* Chamber of Deputies or Senate) unless members thereof, but that they shall have entrance to both Houses and be heard upon request. This clause has hitherto been interpreted as placing the Prime Minister under the obligation either of appointing a minister without a seat to a seat in the Senate, or of causing him to stand for election to the Chamber at the first vacancy. Here, then, we have, according to the Constitution and to the practice of successive governments, a normal cabinet system of government under a monarchy—in short, a hereditary and nominal executive, whose functions are actually discharged by a cabinet of ministers responsible to Parliament.

The extraordinary revolution through which Italy has passed since the close of the Great War has resulted in a tendency to turn this parliamentary executive into one that is fixed, albeit it is still covered in the cloak of parliamentary forms. A brief survey of the Fascisti Revolution will make the causes of this tendency manifest. Italy's political passage since the completion of her unity in 1870 has been anything but calm. Still, up to 1918, the parliamentary system worked fairly well in the hands of normal Liberal majorities. During a period of rapid industrialisation from about 1892, a socialist party grew up within Parliament and became very powerful immediately after the War, securing 156 seats in the election of 1919. But meanwhile a strong Syndicalist movement developed, demanding the transference of the control of the means of production into the hands of the workers. This demand became so vociferous that in 1920 Signor Giolitti, the Liberal Prime Minister, partially succumbed to it and bestowed upon the workers in the North a large measure of factory control.

The Syndicalist movement, being essentially an extra-parliamentary one—for the ultimate object of syndicalism is the supersession of political by economic democracy—many Italians came to the conclusion, especially in view of the weakness of the Government, that the only way to counter it was to found a movement for its suppression equally outside the walls of Parliament. This is the basic fact to grasp about the Fascisti movement in Italy. Long before it was centrally organised, as it is now, it had achieved much of its object of terrorising the Syndicalists into submission to its views through local organisation. This unprecedented organisation of a hitherto unorganised class was born in the determination of sections of that class to take the law into their own hands. The origin of the word Fascisti is the Latin “fascēs,” the bundle of twigs fastened around an axe, the emblem of authority which the old Roman lictors carried when they accompanied the consuls, and which symbolised the right to inflict corporal and, if necessary, capital punishment. The early Fascists simply undertook to inflict corporal punishment (they have not, on occasion, hesitated to inflict even capital punishment) in an entirely unauthorised manner upon the Syndicalists or Communists or Bolshevists (they were indifferently designated all three) whom they considered to be offenders against social peace and security.

As the Fascisti movement was at first, so it has essentially remained—an extra-parliamentary organisation—but through its being caught up in a net of constitutionalism, it has first been modified in itself and then has proceeded to modify that constitutionalism. When, in July 1921, the Syndicalists declared a General Strike, the Fascisti, by then organised by the genius of the mass movement, Signor Mussolini, sent an ultimatum to the Government to hand over to them, within forty-eight hours, six ministries in the Cabinet and the control of the Air Force. This being refused, the Fascisti, in the following year, moved towards Rome. While this vast horde waited threateningly outside the city, the King saved the situation, and at the same time took the wind out of their unconstitutional sails, by inviting Signor Mussolini to form

a ministry. Ever since that moment Fascismo has been in a dilemma, with its leader as both head of an extra-constitutional militaristic body—for, as he says, "the Fascisti party is always a militia"—and Prime Minister in a constitutional state.

It is this double-sidedness of Signor Mussolini's position which causes the tendency to change a parliamentary into a fixed executive, for whatever happens, the *Duce* must remain the head of the state whether representative democracy, as normally understood, will have it so or no. As we have shown in Chapter VI, the Italian Constitution, though it is documentary, is a flexible one, and can be bent by custom and statute to any extent, but many doubt whether it can be said to exist any longer when parliamentary institutions, which were intended to establish ministerial responsibility, are used merely as a cloak for the fact of irresponsibility. It is not for us to judge between the merits of the parliamentary and fixed executive as suited to Italy's needs at this moment, but it must be observed that Signor Mussolini's premiership is an office indeterminate in scope and interminable by the ordinary action of a parliamentary majority—in fact, the very antithesis of a parliamentary executive—as is proved by two recent laws touching the relations between the executive and the legislature. By a law of December 24, 1925, the Prime Minister is to be called the "Head of the Government." Though he is appointed and dismissed by the King, the latter must maintain him in power until "the system of economic, moral and political forces," which raised him to power, shall cease. By Article 6 of this Law, the Head of the Government is made independent of any parliamentary vote of confidence or censure, and no motion can be laid before either House without his previous sanction. He shall lay before the King the names of ministers who are responsible to him (the *Duce*) and not to Parliament. The Italian Cabinet thereby becomes what some one has called "a consultative body for the Head of the Government." Furthermore, it is enacted by this Law that any one who by word or deed disparages the Head of the Government shall be liable to imprisonment for a period of from six to thirty months.

A second law of January 31, 1926, enacts that the Government has power to make new laws by Royal Decree, " whenever reasons of urgent and absolute necessity require it." But, it adds, if such laws are to be operative for more than two years they must be passed by Parliament, before the expiration of that period. Failing such ratification, as one of the Italian ministers has explained, it would be necessary to renew the Law by a further special law. By a yet later law (September 1928) the Fascist Grand Council, through which the *Duce* has always worked for administrative purposes, but which hitherto has never been constitutionally recognised, is legally established as an organ of the state. In fact, it becomes, according to Article 1 of this Law, " the supreme organ co-ordinating all the activities of the *régime* which arose out of the Revolution of 1922." It has deliberative powers in the cases laid down by the Law, and will, in addition, " give advice on every political, social, and economic question submitted to it by the Government." The Law states further that the Council of Ministers (*i.e.* the Cabinet) are *ex officio* members of the Grand Council, and hence the tendency will inevitably be for these two bodies to become identified, and for the Chamber of Deputies and the Senate to be placed in a position of subjection to the Grand Council. So, although the " Head of the State " still works with Parliament, the tenure of that body depends upon the docility with which it sanctions Fascismo's decrees. Signor Mussolini himself does not conceal this truth, as shown, for example, in a speech he delivered to the Chamber on May 26, 1927, in the course of which he said : " I have become convinced that I must carry on the task of governing the Italian nation for ten or fifteen years yet. It is a necessity. My successor is not yet born."

In other words, the legislature in Italy is now the executive's creature—a sort of registry office akin to the " packed Parliaments " of the Tudors in England, or to the *Parlements* of the French kings of the pre-Revolutionary epoch, and possessing even less power, for example, than the pre-War German Reichstag. When Signor Mussolini first faced the Italian Parliament as Prime Minister, there were only twenty

Fascist members in the Chamber of Deputies. But a modification of the electoral law of 1919 gave him, at the election of 1924, his required majority. The law was founded upon the frank avowal that a majority over the whole country of electors, however small, even of only one vote, in favour of one party over any other single party in the constituencies, meant that the people wished the party gaining such a majority to have a working majority in the Chamber (in fact, said this law, two-thirds of the Chamber). It is, perhaps, difficult to evade the logic of this doctrine, but it manifests a certain cynicism that is out of harmony with the tradition of Western, and especially Italian, democracy, and the new Electoral Law of 1928, which we shall examine later,* goes even farther away from the traditional representative system. Still, the method in practice has enabled Signor Mussolini to continue his dictatorship and yet maintain parliamentary institutions. The dictatorship in Italy is, therefore, in appearance at least, quite different from that in post-War Spain. In Italy the Constitution has been moulded to suit new purposes; in Spain the Constitution has been entirely suspended.

The conclusion from all this is irresistible. It is that the continuance of the Constitution in Italy depends upon the existence in parliament of a docile majority for Fascismo. It may be that a time will come when the restored tranquillity of the country, or the discrediting of the present system, will permit a full restoration of Cabinet government. What is equally likely is the complete discrediting in Italy of parliamentary government. Only by the abolition of the Fascist organisation could true Cabinet government be restored, whereas the doors of Italy's parliament might be closed to-morrow without affecting in the slightest degree the essential quality of the existing executive, which simply proves its ultimate independence of the legislature. Possibly, if Signor Mussolini were at this moment to submit himself, like an American presidential candidate, to the suffrages of the whole Italian people, they would give him their confidence by a very handsome majority. If that is so, then it might be argued that

* See Chapter XV.

the existing executive is not a dictatorship, but an instrument of democracy. But it would only emphasise our point here that the present Italian executive has, in essence, become a non-parliamentary one. (36)

V.—THE INTERESTING CASE OF POST-WAR TURKEY

The Turkey of to-day is very different from the Turkey of pre-War days. The Turkish Empire may be said to have been dissolved, its former external dominions being partitioned into new states under a tutelage other than Turkish and mandated areas controlled by one or other of the successful Allies. Turkey is now a fairly closely-knit, almost national, state confined very largely to its original Near-Eastern home, Anatolia, with its true capital at Angora. But more than this, an ancient despotism, the Sultanate, has been superseded by a republican form of government, and the ancient headship of the Mohammedan religion, the Caliphate, which was vested in the Sultan, has gone the way of the secular office. Though the old régime in Turkey was always regarded as an absolute monarchy, attempts were made to constitutionalise it. In 1876, Abdul Hamid II, under pressure from the Powers, proclaimed a Constitution, but it remained a dead letter until the Young Turk Revolution of 1908 overthrew Abdul Hamid, when the Constitution was set to work. But though a Parliament met thereafter, the government remained, in fact, an autocracy, and no real control was exercised by the Chamber of Deputies. The chagrin of the Turks at having "backed the wrong horse" in the Great War, and their sentiment of disgust at what they regarded as the feebleness of the Sultan in failing to resist the indignities to which he was subjected during the peace negotiations, spurred them into renewed action. When the Sultan, at Constantinople, signed the Treaty of Sèvres in 1919, the Turkish nation refused to ratify it, and from their new centre at Angora they organised so vigorous a resistance that they forced the Allies to agree to a new treaty after two conferences at Lausanne in 1922-3. This latter treaty brought the Turks back into Constantinople and Thrace.

Meanwhile, a Parliament, under the arrangements of the Constitution revived in 1908, assembled at Angora, and it assumed a constituent mandate which it did not by right possess. It worked directly under the influence of one of the few great men that modern Turkey has produced, Mustapha Kemal, a soldier and statesman whose views were very markedly coloured by Western ideas. This Assembly so amended the original Constitution as in fact to abolish it and write a new one. On October 29, 1923, with only half (158) of the members present, it unanimously elected Mustapha Kemal President of the Turkish Republic.

The President under the Constitution has a remarkable sweep of powers. Having been elected by the legislature—*i.e.* the Grand Assembly which consists of only one Chamber—he holds office during its term which is four years, but is eligible for re-election. So far, he resembles, in some respects, the President in France, and in others the Federal Council in Switzerland. Next, he works through a Cabinet with a Prime Minister, but he chooses the Premier and approves the appointment of every member of the Cabinet. Again, on all legislation passed by the Assembly he has a veto, which, however, he must exercise, like the American President, within ten days; but as the Assembly can override his objections by passing the law again by a bare majority, in this respect the Turkish President is not so powerful as the American President, whose veto, it will be recalled, requires a two-thirds negative majority in both Houses to make it ineffective. But in practice the Turkish President is much more powerful, for, since he is the leader of the party organisation of the majority party in the Assembly which elects him, he can, in fact, sway that Assembly as he likes. Besides this, he selects the President of the Assembly, the holder of an office equivalent to that of the Speaker in the British House of Commons, and thus exercises what is virtually a four-fold presidency—of the Republic, of the Cabinet, of the Assembly, and of the majority party therein. This is something unique among constitutions with cabinet governments, for it is the only one where the elected President, working through a cabinet of ministers, yet remains the real

executive. Yet it is hardly a fixed executive, in the American sense, since the dissolution of the Assembly ends the term of the Presidency.

As at present organised, the Turkish Republic would appear to be a virtual dictatorship, constitutionally limited only by the term of the Assembly. While a man with a personality of the force of Kemal Pasha's remains in the ascendant, even the life of the Assembly is, presumably, in his hands. Time alone can prove whether any form of government other than a dictatorship is suited to Turkey, or whether, with the passage of power from the hands of the present President, parliamentary institutions are to triumph there or another of his type is to be produced. (37)

VI.—COMPARATIVE ADVANTAGES OF PARLIAMENTARY AND FIXED EXECUTIVES

From this long and, perhaps, wearying discussion of the two fundamentally distinct types of executive in the modern world there emerge one or two points which need emphasis. First, we observe that our own country is the general inspirer of the parliamentary executive wherever it appears, being the model upon which all the others are based. It is interesting, therefore, to note that in England the executive was originally a non-parliamentary one and in name remains so, for every minister is the servant of the Crown, and is still nominally appointed and dismissible thereby. Since, therefore, the British parliamentary executive is a conventional growth, it is not futile to speculate whether it might not, by the same unwritten means, assume once more in fact a non-parliamentary character. As the power of the electorate grows, it may well be that that electorate will come, in effect, to elect a Prime Minister as well as a House of Commons. One might suggest that this was what happened when Mr. Lloyd George was returned to power in the election of 1918, outside all party lines. We have in this chapter pointed out that this change has, to a large extent, though possibly only temporarily, taken place in Italy. It is true that in England the Prime Minister-to-be is not elected as such, but as a Member of Parliament,

yet a subtle working of democratic forces might give substance to what is now a shadow, even as in the United States the election of the President has become a popular election when it was never intended to be.

We may well ask, therefore, which of these types of executive better serves the purposes and the good of democracy. As to the parliamentary executive, since it is founded, where it is most real, upon a party system, there is a danger that it may become the slave of the legislature which creates it. While this system implies that the legislature and executive can hardly ever come into serious conflict—which is a good thing—the executive may come to reflect not only the permanent will of the legislature, but its transient moods and passions, and hence those also of the electorate, which may be even more fickle. Freedom from this danger is the good point about the fixed executive, for, in the first place, executive action often demands that, for the good of the state, it shall be untrammelled, and in the second, a man in the position, for example, of the President of the United States may, in his independence of such control, become a true leader and thus save democracy from its greatest peril—that of being no better as a whole than the lowest member of it.

Yet a fixed executive, which is popularly elected, as in the United States, is clearly more directly subject to popular passion than is an executive dependent upon the legislature. But its great advantage is that, once elected, it cannot be disturbed by the whims of party feeling and the shifting criterion of bye-elections. As we have said, a parliamentary executive, to be stable, requires an established and well-defined party-system. Where it has this, as in Britain, it works well. Where it has not, as in France, the composition of the executive is constantly changing, which is a bad feature in any government. The safeguard we have noticed in the case of Czecho-Slovakia, where a serious government defeat in itself cannot force a resignation, is a good plan, especially in a newly-founded political organisation, which requires, more than anything else, practice in the working of democratic machinery. But constitutional safeguards in themselves are

of little value. A fixed executive can become a mere tyranny where the constitution is a dead letter, as in some of the Latin-American Republics, or where the constitution furnishes no effective democratic checks, as in the case of pre-War Germany, or where an extremely flexible constitution gets into the hands of an unscrupulous politician or body of politicians, as it might conceivably do in Italy. A parliamentary executive, on the other hand, might easily become corrupt, with the connivance of an assembly itself not above corruption, which was to some extent the case in England under Walpole.

The conclusion to which we are driven is that both these types of executive require, for their proper working, a political experience which is necessarily lacking in the case of the newer states of the world. The problem for such new states, therefore, is to find the most stable form of government, consistently with the security of popular rights, during the period necessary for experience to be gained. And it is probable that this stability is to be secured more certainly through the device of the parliamentary executive than through that of the non-parliamentary. For a parliamentary system imposes a check upon the executive at one remove from the politically ill-educated mass. The representative House, which supplies the check on the executive in this case, meanwhile gains experience by the constant exercise of parliamentary functions. And when at length the parliamentary electorate has settled down to a proper working of elections, it will probably be in a better position to destroy a corrupt house of deputies, conniving at an inefficient executive, than it would be, after the same lapse of time, to prevent the practice of tyranny by an executive free from control over the period for which it is elected.

READING

- BAGEHOT : *English Constitution*. Introduction to, by the Earl of Balfour.
 BRYCE : *American Commonwealth*, Vol. I, Chs. v-ix, xx-xxi, xxv. *Modern Democracies*, Vol. I, pp. 393-99 ; Vol. II, pp. 71-82, and Ch. lxviii.
 DICEY : *Law of the Constitution*, Appendix, Note iii.
 GETTELL : *Readings in Political Science*, Chs. xvii, xix.
 LOWELL : *Government and Parties*, Vol. II, pp. 193-207.

REED : *Form and Functions of American Government*, Chs. xix-xx and xxiv-xxv.

WILSON : *State*, pp. 327-330, 373-382, 401-408, 459-461.

Europa Year Book for 1928, pp. 626-627.

SUBJECTS FOR ESSAYS

1. Show how a fixed executive may have either a democratic or a despotic tendency.
2. What changes has usage introduced in the system of Presidential Election, as originally stated in the Constitution of the United States ?
3. Explain the powers of the President in the United States. In what sense is he a real executive ?
4. "An American President can, if he chooses, run counter to the opinion of Congress." Elucidate this statement.
5. Explain what is meant by a diffused executive power and show how this is more nearly achieved in the Swiss Republic than in any other modern state.
6. In what respects is the Swiss Executive unique among executives in modern states ?
7. What justification is there for the statement that the executive in post-War Italy has a tendency to change from the parliamentary to the fixed type ?
8. Discuss the powers of the President in the new Turkish Republic.
9. Compare and contrast Cabinet government in the United Kingdom with Presidential government in the United States.
10. Which of the two sorts of executive—parliamentary and non-parliamentary—do you consider the more compatible with popular sovereignty ?

CHAPTER XII

THE JUDICIARY

I.—THE INDEPENDENCE OF THE JUDICIAL DEPARTMENT OF GOVERNMENT

A DISCUSSION of judicial systems, classified, as we have classified them, on the ground of the difference between the Rule of Law and Administrative Law, arises directly out of an examination of executive systems, for it is especially on account of the distinction between the judiciary and the executive that this division is made. What we have called Common Law States, like our own, which have developed this Rule of Law, are identified by the complete freedom of the judicial body from administrative (or executive) interference, while those we have designated Prerogative States allow a certain branch of law, called Administrative Law, to be controlled by the executive. It is with this distinction that this chapter will be chiefly concerned, but before coming to this in detail it will be well for us to deal with some more general features of the judiciary. A study of the judicial department of government, as such, is a highly technical matter and belongs rather to jurisprudence than to politics. But, clearly, an introduction to comparative politics would be incomplete without some treatment of the judiciary, inasmuch as it is everywhere one of the three great organs of government and is closely associated with the powers of the other two and with the rights and duties of the governed.

In discussing, in Chapter X, the theory of the separation of powers, we pointed out, it will be remembered, that in its extreme interpretation this doctrine means the complete isolation of the three departments from one another, but that, in a broader sense, it means merely that the three

powers shall be in separate hands. The extreme interpretation is impossible of achievement in practice under modern conditions; since the business of a constitutional government is so complex that it cannot define the area of each department in such a manner as to leave each independent and supreme in its allotted sphere; for, as Professor Laski has said, "the separation of powers does not mean the equal balance of powers." In a truly constitutional state, even where the executive is a non-parliamentary one, the legislature ought to be and is able to secure that executive acts broadly carry out its will, and we have seen that in the very state where the doctrine of the separation of powers was of the essence of its first Constitution—namely, France—that doctrine has since been so far modified as to introduce in the latest Constitution the system of the parliamentary executive which makes the executive a part—a committee, in fact—of the legislature. Again, there should, and does exist, under a good system of government, a prerogative of pardon or reprieve in the hands of the executive which may hereby check or undo the too harsh decisions of the judiciary. And, further, it is always the business of a legislature, within the limits of its competence, to secure that, if the tendency of the judiciary is deemed to be against good policy, it shall be reversed by legislation. These instances show the interaction of the three departments.

But in the broader sense—that the three powers shall be in separate hands—all modern constitutional states conform to the ideal of separation of powers, for in no case to-day is the body that performs one function identical with those that perform the other two. As to the legislature and executive, the separation obviously exists in the case of a state with a non-parliamentary executive. It also exists in a state whose executive is a parliamentary one, for the executive is only a part of the legislature and not the whole of it. As to the executive and the judiciary, there are one or two exceptions which hardly touch the main truth that they are different bodies. For example, in Britain the Lord Chancellor, the highest judicial dignitary in the land, is a member of the Cabinet, besides being, *ex officio*, Chairman of the House of

Lords, and hence the occupancy of the Woolsack changes with a change of government. Also the Lords of Appeal are members of the House of Lords, but this is due to the accident that the House of Lords is still the Final Court of Appeal; and just as an ordinary peer has nothing to do with the work of this judicial body, so the Lords of Appeal ordinarily take no part in the political business of the Lords. In most Cabinets on the Continent, too, there is a Minister of Justice, but he is not always a judge. Only in the United States is it true that there is no representative of the judicial body in the executive and vice-versa. But these are exceptions which prove the rule, and it remains one of the maxims of constitutionalism that the judiciary ought to be free from control in its own department, though the question arises, what are the limits of that department?

In pursuance of this maxim of independence, the tenure of judges in most constitutional states is permanent, that is to say, they hold office while they are "of good behaviour"—*i.e.* not guilty of any crime known to the law—and their tenure is therefore not subject to the fluctuations of electoral results as are the other two branches of government. Two great exceptions to this are Switzerland, where the judges are elected by the two Federal Chambers, sitting together, for six years (but even here re-election is so frequent as to achieve, to all intents and purposes, a permanent tenure of office), and some of the individual states of the United States in America, where the pernicious system of popular election for a term (in some cases as short as two years) obtains. Such a system leads to all sorts of abuses and corruptions. It does not, of course, apply to the Federal Judiciary in the United States, where the appointment is in the hands of the President with the advice and sanction of the Senate.

In France candidates for the Bench of Judges are selected by competitive examination (a system of appointment which obtains universally in France for all permanent government posts—even for school-teachers) under the direction of the Minister of Justice, and they pass from one grade to another of the courts by seniority and merit. They cannot be removed

by either the legislature or the executive, but only by the final court of appeal (Court of Cassation) acting through a committee of seven judges. In Great Britain judges are appointed in theory by the King, in practice by the Lord Chancellor, and their right to hold office while of good behaviour was definitely established by the Act of Settlement (1701). They can be removed only as the result of an address of both Houses of Parliament to that end, but as no such address has ever been presented since the passing of the Act the permanency of their tenure is manifest. In the United States judges can be removed only by the process of impeachment before Congress.

Thus, though the executive, or a part of it, in most cases appoints judges, generally speaking their removal is in the hands of the legislature, or, at any rate, it is entirely outside the control of the executive. Thus are the ultimate rights of the governed in most constitutional states doubly secured, since the judges, on whom largely rests in the last resort the guarantee of those rights, are not appointed by a process in which the notorious fickleness of democracies plays any part, and they are given a security of tenure which raises them above the exigencies of political expediency. Having shown in what respects the judiciary is independent of the other two departments, we have now to examine what influence the judiciary can bring to bear on (i) the legislature and (ii) the executive.

II.—THE JUDICIARY AND THE LEGISLATURE

We have said that the business of the legislature is to make the law, and that of the judiciary to “decide upon the application of the existing law in individual cases”; in other words, to punish the transgressors of the law. But we have also seen that in many states the judges actually make law by their decisions. This case-law or judge-made law is characteristic rather of Common Law States, like Great Britain, than, of Prerogative States, like France (though it is a curious fact that the administrative courts, as distinct from the judicial courts, in France, do actually use this process).

The principle of judge-made law is founded upon the force

of precedent ; that is to say, the previous decisions of judges are generally regarded as binding on later judges in similar cases, though variations on these decisions accrue with time, the previous decision merely standing as a guide. In this way, in Anglo-Saxon states, new law is grafted on the old, entirely apart from the work of the legislature, so that whether the judge accepts a precedent or creates one he may fairly be said to make law. Thus, a great English authority, the late Professor Dicey, speaks of the "essentially legislative authority" of judges, and a great American judge, Mr. Justice Holmes, says "judges do and must legislate."

This case-law implies an important characteristic of Common Law States, that in such there is no codification of the law, that is to say, no organised system of law, fixed in extent at one time, beyond the limits of which the judges may not act, except in special circumstances. But in those states where the law has, as in most Continental states, long been codified, this building-up of law by the judges is not possible. In France, for example, where the law has been codified since the time of Napoleon, the judges are expressly forbidden to build up case-law. They have the code to guide them, and if the code is defective as to the particular case before the court, the judge may give a decision, but it will in no sense be binding in future cases. Now, under the Common Law system such a decision would be held to be good law for the future. There are advantages and disadvantages in both systems. In Common Law States, the lawyer is certain of his ground where he is dealing with precedents and is not subject to the whim of a judge or the ambiguous phrasing of a codified law. On the other hand, the mass of precedent decisions has become so tangled, confused and conflicting that it is often difficult for lawyers to discover what the law really is. In states with a codified law, judges are in one sense freer than ours, since they are not controlled by precedents, and when a case arises outside the existing code they can concentrate on doing justice without having to watch that the precedent of a learned predecessor is followed. At the same time, judges in such states are more circumscribed, since only the legislature

can alter the law, either by the passage of special laws, or by permitting a new codification, whereas Common Law judges can by their reasoning and judgments make new law so long as their decisions are not in conflict with Statute Law. All this, of course, does not affect the power of the legislature to alter by statute any previous decisions, however venerable, of any judges, however eminent, or to modify a legal code, always provided that the legislature is acting within the powers granted to it by the constitution, and a study of the relation between the judiciary and the legislature in connection with some of the subjects we have earlier touched upon—the unitary and federal state, the flexible and rigid constitution—is extremely helpful here.

We have said that in a unitary state the central legislature is supreme, except for restrictions, if any, placed upon it by the constitution, while in a federal state the federal legislature is limited both by the fact that it shares its powers with the states and by the fact that the constitution is rigid. As to the constitution, we have shown that where it is flexible the supremacy of the legislature is undisputed, and where it is rigid its supremacy is modified to the extent of restrictions placed upon it in the matter of constitutional law-making. What part does the judiciary play in seeing that these conditions are fulfilled? In examining the unitary state, we saw that in the case of the United Kingdom, for example, the judges are bound to apply laws passed by Parliament, without question. If statute law conflicts with common law, the common law must go in that particular case. The judges have, of course, a certain power of interpretation with regard to any statute, since the “powers, however extraordinary, which are conferred or sanctioned by statute, are never really unlimited, for they are confined by the words of the act itself,” but the judges may not go outside the words; and if the words badly express the intention of Parliament, then the application of the Act may be something quite different from what was intended by those who passed it. Again, in a unitary state there is no possibility of the judges being called upon to decide disputes between the central parliament and other bodies within the state, because

those other bodies have no rights except those bestowed upon them by the central legislature.

But in federal states the position is different. In most of these the powers of the judiciary, as compared with the legislature, are much greater than in unitary states. In the United States, for example, not the legislature but the Constitution is supreme, and this fact gives the judiciary a power which makes it a co-ordinate organ with the legislature and the executive. The federal judges—and, for that matter, the state judges, too—have it as their prime duty to safeguard the Constitution and to treat as void every legislative act, of either Congress or a state legislature, which is inconsistent with the Constitution. They cannot, indeed, abolish such a law, but they are bound to treat it as void in all cases before the Court arising out of it. Thus the judicial department of government in the United States has a competence far beyond that of the judiciary in the United Kingdom.

As we have said earlier, not all federal states have a court with such large powers as these. We have cited the case of Australia, for instance, where the position of the federal judiciary approaches most closely to that of the United States, the difference being that in Australia the conflicts between Federation and State are not likely to be so many, since the rights of the federal authority are not quite so confined as in U.S.A., and since in Australia the Supreme Court may entertain appeals concerning state law, which the U.S. Supreme Court has no power to do. We have also cited the cases of Germany and Switzerland to show further variations of the power of the federal judiciary. In Germany the powers of the federal judges to interpret the Constitution are not nearly so great as in U.S.A. and Australia, because the Constitution says that the federal law overrides state law, but where the question arises whether a certain state law is compatible with federal law, an appeal lies to the federal judiciary. In Switzerland no such interpretative power exists, and in this impotence of its judiciary Switzerland is unique among federal states. (38)

As to flexible constitutions, we have shown that under them there is no place for a judicial power above the legislative

power. In such states as Great Britain, New Zealand, Italy, and Finland, no act of Parliament can be unconstitutional. But Italy, incidentally, presents an interesting case, because in the course of the political unification of the state, the legal systems of its various components were not unified. The result is that instead of one supreme court there are five, corresponding to the five main original states, sitting at Turin (Sardinia), Florence (Tuscany), Rome (Papal States), Naples and Palermo (the Two Sicilies). But the Final Court of Appeal at Rome has since had conferred upon it the power to decide in cases of conflict among these five. This, of course, does not detract in the least from the supremacy of the Italian Parliament.

In the case of rigid constitutions in unitary states, as in France and Belgium, we might expect to find a court with power to decide on the unconstitutionality of the acts of their legislatures, in the event of their being deemed to have contravened the conditions of the constitution and the parliament to have acted beyond its competence as laid down therein. If, for example, a law were passed by the French Chambers extending the term of the Presidency, this would certainly be a breach of the Constitution which cannot be altered except by the National Assembly—*i.e.* both Houses sitting together—as indicated in that Constitution. Yet the fact remains that there is no such court either in France or in Belgium, no judge in either state ever having pronounced a statute unconstitutional. Dicey explains this absence of judicial power by saying that most French (and Belgian) statesmen “may well have thought . . . that . . . possible parliamentary invasions of the Constitution were a less evil than the participation of the judges in political conflicts.” Yet many French critics have urged that a power to restrict the competence of Parliament should be bestowed upon the judiciary which should have the final right to declare a law unconstitutional, a power that was assumed by the judiciary in Norway in 1904 and in Rumania in 1912.

The conclusion from these remarks is irresistible. It is that in all constitutional states the judicial body is given a

status free from capricious or whimsical interferences and a security of tenure that lifts it above the fear of acting against its conscience ; that, except in federal states for the most part, the judicial department of government is bound to impose the laws passed by the legislative department ; and that in most federal states it has the power either to refuse to impose any law passed by the federal legislature which it considers to be beyond that body's constitutional competence, or to decide in cases where the federal and state legislatures are in conflict. The connection between the judiciary and the executive is not so easily stated, as we shall now see.

III.—THE RULE OF LAW

We have said in an earlier chapter that one of the fundamental legal safeguards enjoyed by citizens of what we may call the Anglo-Saxon states—*i.e.* the United Kingdom, the British Self-Governing Dominions, and the United States—is that principle which is summed up in the expression, the Rule of Law. The late Professor Dicey said that we mean by this “ not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.” Now this is by no means a right enjoyed in common by the citizens of all modern constitutional states, as we shall show in this and the next section. We have distinguished the states which enjoy this right from the rest by calling the first Common Law States and the second Prerogative States, and in examining the two types we shall take Britain as typical of the one and France as typical of the other.

This Rule of Law is at the base of the British Constitution, not because it is guaranteed by the Constitution (as rights are frequently secured in documents), but because the Constitution has gradually grown up out of the constant recognition of it. As Dicey puts it, “ the rules which in foreign countries naturally form part of a constitutional code, are, in English-speaking states, not the source, but the consequence of the

rights of individuals, as defined and enforced by the Courts." This Rule, then, places the judiciary not only in a condition of freedom from interference on the part of the executive, but in a positive superiority to it in respect of its individual members, since "every official from the Prime Minister down to a constable or a collector of taxes is under the same responsibility for every act done without legal justification as any other citizen." Officials in this country are constantly brought before the Courts and made liable to punishment or the payment of damages for acts done in their legal capacity, but in excess of their lawful authority. This fact was implicit among the rights of Englishmen from very early days. We find it broadly present in Magna Carta (1215) and still more distinctly in the Petition of Right (1628) and in the Habeas Corpus Act (1679). The reason for this recurrent enforcement was that the Crown in earlier days always tried to arrogate to itself an executive prerogative inimical to the Common Law—*i.e.* contrary to the decisions of the judges—or to make the tenure of judges dependent on its will. This prerogative, to which the Crown from time to time laid claim, it was allowed to hold under the Tudors, but against the Stuart abuses Parliament became extremely vocal in its defence of traditional rights. The Rule of Law was established beyond dispute in the face of the last attempt to restore the Crown prerogative by George III, for in 1763 John Wilkes, who had attacked the King's Speech in his paper, *The North Briton*, gained £1,000 damages from the Home Secretary for wrongful arrest on a General Warrant. In this last case, not only was the private citizen secured against arbitrary action on the part of a government official, but that government official found himself entirely unprotected against the processes of ordinary law, even though he may have been conceived to be acting in his purely official capacity or in the interests of the state.

In those states which enjoy the Rule of Law, therefore, the judges are the ultimate guardians of individual rights in every case that may arise under Common Law, Statute Law and (under rigid constitutions which make this a separate branch) Constitutional Law. Nothing that the executive of itself can

do can affect the attitude of the Courts towards breaches of the law by state officials. It is true that at any moment certain rights, hitherto existing, may be abrogated by Act of Parliament (which indeed may be and probably is passed at the instigation of the executive) and that it would then be the business of the judges to enforce the law so made. It may even be that such a statute would deprive the judges of power to control executive acts in certain cases. But the point is that not until such a law is passed and only in respect of the particular class of acts indicated in the statute could the independence of the judiciary be affected. Such modifications of the Rule of Law we shall discuss in the last section of this chapter.

Britain is not alone, as we have already remarked, in the enjoyment of this Rule of Law, for, besides the Self-Governing Dominions and the United States, it exists in the states of Latin America and in Belgium. In all these states it is enjoyed in spite of the greatest differences between them, for some are unitary and some federal states, not all have rigid constitutions, and some have parliamentary, while others have non-parliamentary, executives. The existence of the Rule of Law in the case of the Anglo-Saxon states is explained by the fact of their common English origin. Its existence in Belgium, which in this respect is unique on the Continent of Europe, is due to British influence upon the state during the critical period of the establishment of its independent sovereignty which was finally achieved in 1839. In the case of the Latin-American states, it is due to the fact that they have rather imitated the United States than perpetuated the tradition of the Latin states of their origin. In all other cases the reason for the existence of the Rule of Law is clear. The original English Colonists in various parts of the globe carried with them the tradition of the English Common Law, and this was a part of their very social substance long before their constitutions came to be written. So that, where Continental states, which know nothing of this Rule of Law, have secured the rights of the individual through their constitutions, these original British Dominions had no need so to safeguard them. Thus

the constitution in each of these latter states has not affected the Rule of Law, or else it has only strengthened it, as, for example, in the United States whose Constitution categorically asserts that "the judicial power shall extend to all cases in law and equity, arising under the Constitution."

We shall now examine how, in those states where the Rule of Law does not obtain—*i.e.* those which we have called Prerogative States—a special type of law protects state officials in the execution of their official duty.

IV.—ADMINISTRATIVE LAW

We speak of Administrative Law by way of translating the French term, *Droit Administratif*, which is, strictly, untranslatable into English, and the want of a true English equivalent for it, as Dicey has said, is due to the non-recognition of the thing itself. The language of the French authorities on the subject describes something which is quite foreign to an Englishman. Administrative Law, says one, is the body of rules which regulate the relations of the administrative authority towards private citizens, and determines the position of state officials, the rights and liabilities of private citizens in their dealings with these officials as representatives of the state, and the procedure by which these rights and liabilities are enforced. In short, we may say that in France there is a distinction between public and private law, and that the effect of this division of law on the judiciary is that the ordinary courts are not competent to deal with cases arising out of acts of the executive (or administrative) department of government, whether concerning the rights and liabilities of state officials or the rights and liabilities of the citizen in his relations with them.

The effect of this system is to make the "administration the arbitrary judge of its own conduct." The system is inherent in French history. In the eighteenth century there were such frequent conflicts between the royal administration and the law courts that by the time of the Revolution the interference of the courts to the detriment of good government

was regarded with justifiable suspicion; and under the influence of the doctrine of the separation of powers, the various constitutions of the revolutionary period made the executive and judicial functions quite distinct and forbade the courts to take any action that invaded the executive field. Napoleon maintained this distinction which has with variations survived to this day.

Thus in France there are two distinct sets of courts—judicial courts and administrative courts. Before the first come criminal cases and cases of private law—*i.e.* between one private citizen and another. Before the second come cases of public law—*i.e.* between the government and its officials, or between private citizens and government officials. This apparently leaves the private citizen without protection against the state official, but in view of certain modifications of the original position in France, the words of Lowell on the subject—that “the government has always a free hand and can violate the law if it wants to do so without having anything to fear from the ordinary courts”—require some qualification. For in 1872 there was established in France an independent Conflict Court to decide in doubtful cases whether the judicial or the administrative department had jurisdiction, so that the judicial court might not of its own authority encroach on the administration and the administrative court should not have the judicial court at its mercy. To secure impartiality this Conflict Court is composed of nine members—three chosen by the highest judicial court (the Court of Cassation), three by the highest administrative court (the Council of State), and two more chosen by these six, the ninth member being the Minister of Justice (a member of the Cabinet) who acts as president. The eight members hold office for three years, but are eligible to be and generally are re-elected. The term of the Minister of Justice, of course, coincides with that of the Cabinet to which he belongs.

This system of administrative law, as we have said, has been adopted in most Continental states whose judiciaries manifest in this respect narrower or wider variations of the French model. In Germany, for example, in each of the separate

states which went to form the Empire there was already an administrative law to protect public servants, and, under the Imperial Constitution of 1871, the Bundesrat (as the Upper Chamber was then called) was made the chief administrative council of the Empire. Under the Constitution of the new German Republic the distinction between administrative and judicial courts is retained. In Switzerland also the distinction is made, but here the judiciary is completely subordinated to the legislature and executive, and administrative jurisdiction is in the hands of the Federal Council (Executive) with an appeal lying to the Federal Assembly (Legislature). In Italy administrative and judicial courts are differentiated, but not so sharply as in France. If there has always been in Italy an administrative court for the protection of state officials, it is obvious that the tendency at the moment is to give it more power, and to that extent further to disarm the judiciary against the executive. (39)

V.—JUDICIARIES UNDER THE TWO SYSTEMS COMPARED

If we closely examine these two legal systems, as they were and as they are, we are struck by some of their ultimate likenesses no less than by their superficial differences. With the passage of time and the progress of constitutional checks, the administrative courts in Continental states, and particularly in France, have lost much of their former absoluteness. Under Napoleon, for example, the powers of the Council of State were all but despotic in deciding administrative cases, and in spite of revolutions in a democratic direction—*e.g.* in 1830 and 1848—the immunity of the executive from the ordinary processes of law remained almost untouched. But after the fall of the Second Empire (1852–1871) and during the existence of the Third Republic, and particularly during the present century, much modification has gone on. As we showed, the Conflict Court is equally representative of the ordinary judicial body and of the administrative judiciary, though the fact that its president is a member of the government of the day, ensures to the executive that its interests will be carefully safeguarded.

Again, looking at the English system historically, we find that ideas current in the sixteenth and seventeenth centuries were not altogether opposed to the establishment of something very like an administrative system of law. The Tudors and the Stuarts were supported by those who were ready to assert that the administration had a discretionary power which could not be controlled by any court of judges. Such courts as Star Chamber, the Council of the North, and the Court of High Commission, for example, were, to all intents and purposes, administrative courts completely in the hands of the executive, which in those days was actually the Crown. Lawyers, like Sir Francis Bacon, if they had had their way, would have succeeded in establishing in England an administrative system distinct from the ordinary law. Their object was defeated by the failure of the Stuarts in the Civil War and the triumph of the traditional respect for the principle of equality before the law which was reinforced by the statutory arrangements connected with the Revolution of 1688.

We have observed earlier that the progress of collectivist legislation, establishing new social services—*e.g.* National Insurance—tends to give new powers to the executive branch of government in Britain. This drift, indeed, is inevitable under modern democracy. Legislatures in great industrial communities, like Britain, U.S.A., Germany and France, with an ever-increasing burden of law-making upon them, simply cannot compile statutes in such detail as to meet every possible contingency in operation. The result is that “administrative bodies not only find themselves compelled to undertake judicial duties, but also to perform them in such a way that the courts are excluded from scrutiny in their operations.” For example, in Britain it has been decided that, if no particular method is detailed in a statute, the government department concerned with its execution may adopt what procedure it thinks best without interference from the Courts. Or where a method is outlined it often equally results in the virtual independence of the executive from judicial interference. The National Insurance Act of 1911 (with its extensions), for example, establishes a body of Insurance Commissioners

appointed by the Treasury who have powers given them by the Act to make regulations for carrying it out. They have also judicial authority. Any claim made by a workman, and questions arising out of it, are to be decided by the Commissioners, with an appeal to a Court of Referees and a final appeal to an Umpire. Hereby, for purposes of this section of the Act, the ordinary law courts are excluded, and no Commissioner or Referee or Umpire is a judge. Similarly, in the United States, it has been decided by the highest Court that "the decisions of the Secretary of Labour in all immigration cases are final."

These developments are an unavoidable concomitant of this sort of legislation which demands an expert administrative knowledge to which judges in the ordinary way cannot pretend. Moreover, the extension of the duties of the state, discharged by the administration, necessitates the grant to that department of powers which allow for the expeditious treatment and quick decisions demanded by the multifarious claims involved. The weakness, through its ponderousness, of the Rule of Law, is again seen in times of stress, as, for example, during the War (1914-1918), when, under the Defence of the Realm Act in Britain, many new tribunals, outside the judiciary, were set up. This manifestation, as it has been called, of "the encroaching temper of the ever-expanding executive" is clearly a danger, and unless carefully watched, obviously threatens the ramparts of liberty. "It would be strange," as a great English judge, Lord Sankey, has said, "if we had escaped the frying-pan of the prerogative to fall into the fire of a Minister's Regulations."

In those states, on the other hand, where a distinction is admitted between the two departments of administrative and judicial law, there exists protection not only for the official but for the private citizen, and the latter knows where he stands with regard to the official. In France litigation in the administrative court is cheap and is executed rapidly, the procedure is simple, and Frenchmen prefer it for such cases, just as a soldier is said to prefer the direct and expeditious methods of a court-martial, though he thereby loses the safeguards of trial by jury. The lack of protection afforded, under

modern conditions, to the citizen of a state with an administrative law can easily be over-stated. The very clear distinction made in France between a "fault of service" and "a personal fault," on the part of the official, at the same time protects the citizen against the evil consequences of too much official zeal and gives the official less cause for fear in acting as an efficient servant of the state.

It is admitted, then, that in Common Law States the Rule of Law is bound to be relaxed under the weight of modern social legislation. If, by being forced to grant judicial powers to heads of departments, we suffer the disadvantage of a sort of administrative law, we do not enjoy the compensating advantages of a recognised distinction between this and the judicial law. Two lines of reform have, therefore, been suggested by critics of the administrative tendency in Britain. The first is that the administrative tribunals, where they must exist, should be completely judicialised, and made entirely independent of the executive; that is to say, there should be established for such purposes special courts whose judges would be experts in the matter concerned. The second is that in certain cases there should be an appeal from the administrative tribunal or the decision of a minister to a judicial court. In this way we should diminish the danger to individual liberty which lurks in these modern qualifications of the Rule of Law.

We come to the conclusion, then, that, in spite of differences in legal attitude and historical development, constitutional states do not nowadays greatly differ in the ultimate rights secured to citizens through the judicial department. They all ensure the impartiality of the judge by placing him above fluctuations of party feeling and giving him security of tenure without making it impossible to remove him for crime or corruption. In states whose legal systems are founded on Common Law, the Rule of Law puts the executive on an equality with all other bodies and makes it answerable for its actions by refusing to admit reasons of State for executive acts. In Prerogative States which have an Administrative Law, the executive is placed to some extent above the processes of

ordinary justice by making the official answerable to an administrative court. But the Rule of Law under modern conditions suffers somewhat through the exigencies of latter-day collectivist legislation which perforce grants to officials absolute powers that in practice place heads of government departments above the law, though, of course, this is only in so far as the statute concerned permits it ; while, in the case of Prerogative States, although a special procedure protects the official, it is now so hedged about with restrictions that the ordinary citizen has little complaint against it.

In general, we may say that Common Law States have a greater air of legalism than those whose law is codified, and which have an administrative law. The reason for this is that in the former the judges can make law, whereas in the latter the code restricts the judges in this respect and leaves a wide area for decision in the administrative courts where, in fact, the judges do make the law under the direction of the executive, with the result that there is a sort of judicial legislation going on in Prerogative States, and this defies codification. Putting it another way, we may say that jurisprudence (*i.e.* law on the basis of precedent) characterises Common Law States, and that political decisions (as distinct from judicial decisions) have wider scope in Prerogative States. Whether judges or politicians are the better custodians of democratic rights is a question not easy to answer. But as, in all modern democratic constitutional states, the ultimate power to alter any of these decisions lies with the people, through its power either to force the hand of the legislature or change it, or through its right to bring about a constitutional amendment, or through its ability to effect changes through a Referendum, the question, after all, is perhaps only an academic one.

We have now reached the end of our comparative treatment of the fundamental differences among constitutional states. We have compared the two kinds of states, unitary and federal ; the two kinds of constitution, flexible and rigid ; the two kinds of legislature from three points of view—whether elected by manhood suffrage or adult suffrage, whether elected in single-member or multi-member constituencies, whether the Second

Chamber is elective or non-elective ; the two kinds of executive, parliamentary and non-parliamentary ; and finally the two kinds of judiciary, whether restricted or unrestricted by a special administrative law. Their differences are many, but so are their likenesses, and on the likenesses rather than the differences, perhaps, rests the political future of mankind. Yet, in dealing thus comparatively with these many and various features, we do not exhaust all the matters of interest to the student of constitutional politics. There remain certain topics which defy classification, and with these we shall now deal in Part III.

READING

- BRYCE : *American Commonwealth*, Vol. I, Chs. xxii-xxiv. *History and Jurisprudence*, Vol. II, Essays xi, xiv, xv. *Modern Democracies*, Vol. I, Ch. xxii ; Vol. II, Chs. xliii, lxii.
- DICEY : *Law and Opinion*, Lecture xi. *Law of Constitution*, pp. 151-167, Ch. xii, Appendix, Note xi.
- GETTELL : *Readings in Political Science*, Ch. xx.
- JENKS : *Government of British Empire*, Ch. xi.
- KEITH : *Responsible Government in Dominions*, Vol. I, pp. 570-4 ; Vol. II, pp. 661-72, 727-31.
- LASKI : *Grammar and Politics*, Pt. II, Ch. x.
- LEACOCK : *Elements of Political Science*, pp. 199-209.
- LOWELL : *Government of England*, Vol. I, Ch. xix ; Vol. II, Chs. lix-lxii. *Government and Parties*, Vol. I, pp. 44-65, 170-77, 214-19.
- MARRIOTT : *English Political Institutions*, Ch. xiv. *Mechanism of Modern State*, Vol. II, Chs. xxxi-xxxiv.
- REED : *Form and Functions of American Government*, Ch. xxiii.
- SAIT : *Government and Politics of France*, Chs. xi and xii.
- SIDGWICK : *Elements of Politics*, Ch. xxiv.
- WILSON : *State*, pp. 164-5, 173-5, 216-222, 321-27, 366 73, 407-9, 413-18, 428, 486-89.

BOOKS FOR FURTHER STUDY

- BOUTMY : *Studies in Constitutional Law*.
- GOODNOW : *Comparative Administrative Law*.
- HEWART : *The New Despotism*.
- MEDLEY : *English Constitutional History*.
- RIDGES : *Constitutional Law of England*.

SUBJECTS FOR ESSAYS

I. "The separation of powers does not mean the equal balance of powers." Discuss this statement with reference to the judicial department of government in comparison with the other two.

2. Why is it a good rule that judges should continue to hold office "while of good behaviour"?

3. "Judges do and must legislate." Show how far this statement is true of Anglo-Saxon states.

4. Compare the powers of the judiciary in the average unitary state with those in the average federal state.

5. What is meant by the term "Rule of Law"? Show how it operates in British states.

6. What is the significance of the following words in the Constitution of the United States—"The judicial power shall extend to all cases in law and equity arising under this Constitution"?

7. Attempt a definition of the term "Administrative Law," and explain how it works.

8. How do you account for the fact that in England attempts made at various epochs to establish an Administrative Law have been frustrated, while in France the system remains to this day?

9. Explain how it is that elements of Administrative Law tend to creep into the Anglo-Saxon legal system under the stress of modern social legislation.

10. Discuss the comparative advantages and disadvantages of the "Rule of Law" in Britain and *Droit Administratif* in France.

•

PART III

ADDITIONAL CONSIDERATIONS

•

CHAPTER XIII

DIRECT DEMOCRATIC CHECKS

I.—THE PLEBISCITE AND THE PROBLEM OF MINORITIES

IN Part III we shall be chiefly concerned with an examination of the League of Nations, without which no study of constitutional politics would now be complete. As such an examination is the logical outcome and end of an analysis of modern political institutions, we should not neglect first to deal with any topics which, though they lie on the edge of the subjects already discussed, nevertheless arise out of them. This will serve the double purpose of completing our comparative study of the machinery of existing states and of helping us to approach with a fuller appreciation of its difficulties, the problem of international political organisation. Among the outstanding topics of interest to students of comparative politics are first what may be called Direct Democratic Checks—viz. the Plebiscite, the Referendum, the Popular Initiative, and the Recall; secondly, Partial Self-Governing Institutions; and thirdly, Economic Democracy in its relation to Political Democracy. These three topics expand or amplify one or more of our earlier divisions of the subject, and to each of them we shall devote a chapter. The four direct democratic checks are connected, in that they are designed to give to the voting mass of the people a direct control of their political destiny by granting them the power to approve or reject measures for their well-being, to institute legislation and to remove unsatisfactory representatives. They are thus what we may call ultra-democratic developments. But, though they mark to some extent a reaction against the normal parlia-

mentary methods which we have so far discussed, they are, nevertheless, perfectly constitutional schemes and therefore find a place here. The terms Plebiscite and Referendum are similar in meaning, but refer to practices somewhat different in purpose. Of the Referendum in connection with the amendment of rigid constitutions we have already said something in Chapter VII. Its reference to ordinary legislation we shall discuss in the next section. In this we shall confine ourselves to the Plebiscite with particular reference to its connection with the problem of minorities.

The term Plebiscite means literally decree of the people. The Plebiscite is a device to obtain a direct popular vote on a matter of political importance, but chiefly in order to create some more or less permanent political condition. It was freely used by Napoleon Bonaparte at the various stages of his rise to power, as a means of getting behind the machinery of government already existing. Thus in 1799, having overthrown the Directory by a *coup d'état*, he prepared a Constitution by which he made himself one of three Consuls, and submitted it to the vote of the whole people, who accepted it by an overwhelming majority. Again, in 1802, when he made himself Consul for life, and in 1804 when he proclaimed himself Emperor, he appealed to the people for their approval of these changes. The same plan was associated with the rise of his nephew, Napoleon III, who, by a similar succession of popular votes, secured first his election as President of the Second Republic in 1848, next an acceptance of the *Coup d'État* of 1851 which ended that Republic, and lastly approval of the Second Empire in the following year.

The evil of such a popular vote is that it is democratic only in appearance, for once it is given, the people must bear all the consequences without means of redress. In view of the dreadful consequences of the Second Empire in France, it is not surprising that the Plebiscite became thoroughly discredited in that country, that the essence of the existing Presidency is that it is completely subject to parliamentary control, and that the opponents of that régime are the only ones who still believe in this device. In the United States the Presidency is now in

practice, though not in theory, to some extent of a plebiscitary kind, yet with one great difference. Unlike the French plebiscite, an American Presidential election, though it does indeed establish a real executive, does so for a fixed short term of years, and thus ensures a recurrent popular control, instead of condemning the people to a perpetual acceptance of the régime which their single exercise of the vote has established. The German Presidential election is of this order, too, but in this case, as we have seen, the President is not the real but only the nominal executive. From these examples it should be obvious that if democracy is to use this means of establishing a real executive it must watch carefully that it secures the constitutional means of controlling it. If any individual in a state enjoying constitutional rights should be so popular as to secure a long term of power, by offering himself individually to a vote of the whole people, it would be unwise of them in the extreme thus to lose whatever advantages Parliamentary Constitutionalism, as it has developed so far, can give, without securing some compensating guarantee that the power so bestowed would not be abused.

The chief interest of the Plebiscite in the post-War world has been in its use for deciding the political destiny of those small groups of people which, liberated by the War, were yet unable to establish their complete political independence. This was a logical outcome of the cry of Self-Determination which formed so vital a part of President Wilson's Peace programme in the days of the Armistice. If, as he said, there were to be no annexations, it followed that certain groups of people must decide for themselves to which state they should be attached, supposing it to be impossible, as it was in many cases, for them to establish themselves as sovereign political entities. In the case of areas like Poland and Czecho-Slovakia independent states were set up. In the case of such areas as Alsace-Lorraine, the Trentino and Transylvania, there was no question as to which state they wished to join, for they had long aimed at incorporation or reincorporation with their respective national groups—France, Italy or Rumania, as the case might be. But in certain other cases the issue was not so straight-

forward. Schleswig, formerly belonging to Prussia, must decide whether it wished to remain under that allegiance or change it to that of Denmark ; Allenstein, formerly German, must decide between East Prussia and Poland ; Southern Silesia, formerly Prussian, between Germany and Poland ; the district called Klagenfurt, between Austria and Jugo-Slavia. The Plebiscites were held and the results were honoured by the Powers, except in one case, Southern Silesia, in connection with which a division was afterwards made between Germany and Poland by an arbitration.

But though such a popular vote may have settled the immediate question of political allegiance, it has by no means solved the problem of minorities within the new or enlarged states of Europe. The Plebiscite shows here the same sort of weakness as we saw that it possessed in the case of the earlier French plebiscites. The voting having been held, it appears that the people must continue in perpetuity to stand by the arrangement so made. Diplomacy might arrange for a popular decision to be once taken, but how could it secure to the minorities the enjoyment of an equality of rights with the original citizens of the state so joined ? This problem arises not only in the case of those areas where a Plebiscite was held, but also in those about which there was no dispute either in the area as a whole or in some part of it. For example, there was no question whether the provinces of Alsace and Lorraine, as a whole, wished to be reincorporated with France ; yet there emerges here one of the acutest political problems in Europe to-day, largely owing to religious differences. Again, in Transylvania the majority are Rumanians, but there came over to Rumania with them no fewer than two million Magyars. How are the latter's rights to be secured ? The same question arises in other states. For instance, as a result of the new boundary-making carried out by the Peace Treaties, vast collections of Germans are dispersed outside the borders of Germany. There are three and a half millions of them in Czecho-Slovakia, two millions in Poland, half a million in Rumania, and 300,000 in the Italian Tyrol. Austria itself is a sort of isolated German minority of about seven millions,

demanding entrance into the German Reich, a right which the Peace Treaties have denied them. To take other examples, there are two million Russians in Poland and one million in Rumania, while Jugo-Slavia is a hopeless jumble of minorities, for of its population of twelve millions only six millions are Serbs.

Here, then, is perhaps the greatest problem left over by the War. What can political constitutionalism do for it? The Peace Treaties, it is true, caused the states concerned to sign special treaties guaranteeing rights to the minorities, but it remains for democracy to devise a method whereby such guarantees shall be implemented. Within the state, perhaps, the device that comes nearest to helping a solution is P.R., if properly arranged and fairly used. Outside the state the only existing machinery of surveillance is the League of Nations, of which we shall treat later. The other method which suggests itself is some scheme of federalism which might make the minorities semi-autonomous groups within a federal state. But one thing is certain: there can be no security of peace for Europe, either internal or external, until this question has been more fully settled than it has hitherto been.

II.—THE REFERENDUM

In discussing, in Chapter VIII, the general question of representative government, we said that the system of representation by itself has in some states been found inadequate, and that the distrust of this method alone has led to the adoption of supplementary plans by which the citizens could share directly with the representatives the business of law-making. This is what the three ultra-democratic developments which we are now to discuss, namely, the Referendum, the Popular Initiative and the Recall, set out to do.

These three devices have this in common with the Plebiscite, that they imply a direct consultation of the people; but they differ radically from it in both method and purpose. For whereas the Plebiscite is a vote held on one occasion to create a régime which the voters must afterwards endure without

redress, the other three contrive to establish, by means of a recurrent vote, a perpetual popular check upon the political machine, since the Referendum allows the electorate to review the acts of the legislature before they actually pass into law, the Popular Initiative gives the voters the right to propose measures to be passed by their representatives, and the Recall grants them the power to remove an unsatisfactory representative before the expiration of his term of office.

These three direct democratic checks, then, mark a reversion to the earliest types of direct or primary democracy, as it existed in many states of Ancient Greece. In their modern form these methods derive theoretically from the teaching of Rousseau, whose doctrine of popular sovereignty, inalienable, indivisible and inerrant, applied essentially to small states, in which the possible abuse of representation would be reduced to a minimum; and it is in small states, such as Switzerland and the less crowded individual states of the American Commonwealth, that they have principally been put into practice. But, though these methods have not yet been generally adopted, they have been widely advocated as a means of counteracting some of the evils which undoubtedly lurk in the practice of representative democracy.

Practically, therefore, these devices have grown out of a keen sense of dissatisfaction with the conduct of representative bodies. In the first place, while the action of opinion is continuous, that of voting is only occasional, and many changes of opinion can take place between one general election and another. Secondly, when a general election shall be held is a matter entirely outside the power of the people to decide at any moment. Thirdly, the representative elected may either honestly misconceive the desires of his constituents or deliberately misrepresent their views. Fourthly, in most large states to-day the private member has very little time or opportunity allowed him to initiate legislation or, indeed, to do anything else than support or oppose the policies of the government of the day. Fifthly, the party caucus, or machine, is a thing generally so strong as virtually to destroy the independence of the individual representative.

Some or all of these difficulties are present in all modern constitutional states. They are most apparent in large states, but it is precisely in these that they are hardest to overcome. As to the ways of surmounting these difficulties, we have already spoken of the Referendum in connection with certain rigid constitutions whose amendment requires a vote of the people before it can be carried into effect, as happens, for instance, in Switzerland, Australia, and Germany. In some states its use is carried much farther than this into the realm of ordinary legislation. In Switzerland, for example, in the case of all laws passed and resolutions carried by the federal legislature, a Referendum must be held if a demand for it is made either by 30,000 citizens or by the legislatures of any eight cantons, unless the resolution is declared by the federal legislature to be "urgent." If a Referendum is held and a majority of the people vote against the law in question, it is thereby void. Similarly, in eight of the cantons all laws whatsoever must be so submitted. This is called the Obligatory Referendum. In seven other cantons, if a certain number (which varies from one canton to another) of citizens demands a Referendum, it must be held. This is called the Facultative or Optional Referendum. In a further three cantons some laws of a specified kind must be submitted to the people in any case, and others if a certain proportion of citizens demand it. In most of the remaining cantons the population is so small that primary democracy exists (that is, the whole people forms the legislature) and in such cases, of course, a Referendum would be superfluous.

In the United States the Referendum is not used for any purpose in federal matters, but in many of the individual states legislative abuses have become so glaring and widespread that the Referendum, as well as the Popular Initiative and Recall, have been adopted in recent years, in an endeavour to counteract those evils. The Referendum, in one form, is no new thing in American States, for state constitutions were often enacted by popular vote in the early days of the Republic, and the practice of submitting to the people amendments proposed by the legislature or by a special convention has gone on ever since.

But it has in later days developed much farther, and in several states a provision is now made permitting a prescribed number of citizens (varying from five to ten per cent. of the electorate) to demand that an act passed by the legislature shall be submitted to the people for its approval or rejection. This provision exists in twenty-one out of the forty-eight states, but they are mostly the newer and more westerly states, such as Oregon, Colorado, and California, though so old a state as Massachusetts has adopted this as well as the Popular Initiative. As in Switzerland, most of the American states exempt from the operation of the Referendum any acts deemed by the legislature to be urgent. This power is often abused, and the label of urgency has frequently been attached to a measure without justification, to save it from the possibility of popular rejection.

In Germany also the Referendum may be used for laws besides those amending the Constitution. Any law passed by the Reichstag and going to the President for signature must, within one month of its passage, if the President so orders, be referred to the people. The promulgation of any law passed by the Reichstag (except laws declared by both Houses to be urgent) shall be deferred for two months, if one-third of the Reichstag so demands, and if, during that period, one-twentieth of those entitled to the franchise express the desire, it must then be submitted to the people. We have already explained, in Chapter IX, how the Reichsrat can force the submission of a law to a Referendum. But in all cases of a Referendum, the law in question can be annulled by a popular majority only if a majority of the electorate takes part in the vote. A Referendum is also in use, for laws other than constitutional amendments, in some of the new states of Europe ; for example, in Esthonia, where all laws passed by the State Assembly (Esthonia has a uni-cameral legislature) must be submitted to a Referendum if 25,000 people entitled to vote demand it. In some other states the Referendum has been used on very rare occasions, as, for example, in New Zealand, where the legislature voluntarily submitted to the people the question of the prohibition of the sale of intoxicating liquor ;

and in Australia (apart, of course, from constitutional amendments), where, in 1915 and 1917, on the subject of compulsory military service, and again in 1928, on that of prohibition, the opinion of the people was sought by this means. (40)

III.—THE POPULAR INITIATIVE AND THE RECALL

The Popular Initiative, whose object is to place in the hands of the people a direct power of initiating or proposing legislation which must be taken up by the legislature, is a development of ultra-democratic practice, within the area of constitutionalism, even more advanced than the Referendum. It is necessary to study the Initiative apart from the Referendum, because, although the theoretical foundations of the two are the same, the conditions under which they are applied differ, for, as one authority has said, while the Referendum protects the people against the legislature's sins of commission, the Initiative offers them a remedy for its sins of omission. The argument for the Initiative, beyond that for the Referendum, is that legislatures do not adequately represent the people's point of view and that, as a Referendum only concerns proposals made by the legislature, it is not by itself a sufficient guarantee against abuse. But we often find the Initiative and the Referendum working in combination, so that the proposals initiated by the people come back to them, after passing through the legislature, for their final approval. And in no country in the world do we find the Initiative in existence without the Referendum also. It is, therefore, Switzerland and some American states that we shall again specially use as illustrations.

In Switzerland, where we have shown that the Referendum exists for constitutional amendments, laws and resolutions, for both cantonal and federal affairs, the Popular Initiative is also used for both, but not quite so fully in federal as in cantonal matters. As to the Confederation as a whole, any 50,000 citizens may propose an amendment to the Federal Constitution either as a specific proposal or as a request that such be drawn up by the legislature. In the first case, it must be submitted directly to a popular vote ; in the second, the people

must be asked if they desire the proposal to be proceeded with, and if they by a majority so desire, then the bill is drawn up and finally submitted for acceptance or rejection. In the cantons the regulations for the use of the Initiative go farther and include not only constitutional matters, but ordinary laws and resolutions. In all cantons, except Geneva (whose Constitution is automatically revised every fifteen years), a prescribed number of citizens, which varies from one canton to another, may either demand a general revision of the Constitution or propose specific amendments to it. Again, in all the cantons except three a prescribed number of citizens may either propose a new law or resolution fully drafted or submit the principle of some law or resolution to be drafted by the Cantonal Council. In the former case, the bill is submitted direct to the people; in the latter, the council asks the people by a Referendum whether it shall proceed with the drafting of the bill, and, if they agree, the bill in its completed form is finally submitted for their approval or rejection.

In the United States, not so many states use the Initiative as use the Referendum. At present the Initiative is in force in nineteen states for laws, and in fourteen states for constitutional amendments. The number of citizens which may submit a proposal under the Initiative arrangements ranges from five to fifteen per cent. of the electorate of any given state, while in some states a fixed number is prescribed. But these rights are much abused in America. Agents of political associations are sent round to obtain, even to purchase, signatures to some measure which it is proposed to initiate, and often many of the signatures are forged. In those states which use the Initiative for constitutional, as well as for ordinary, laws, there is no distinction in procedure, and thus ordinary laws are often put in the form of constitutional amendments, and so, if passed, cannot later be repealed by the ordinary action of the legislature. The result is that in some states the Constitution, which in all cases was intended to be a fundamental instrument of special sanctity, is in danger of becoming a mere jumble of minor and trivial provisions entirely unsuited to such a document. This is hardly the outcome intended by the

founders of a scheme whose professed object is the purification of politics.

In Germany there is an interesting clause (the 73rd) in the Constitution establishing the principle of the Initiative. It states that if one-tenth of those entitled to vote initiate a request for the introduction of a bill (which must be fully drafted) the government *must* present it to the Reichstag. If the Reichstag passes it, the law is promulgated without further ado ; if it does not, the bill must be submitted to a Referendum. Also in Esthonia the principle of the Initiative exists in a form similar to that in Germany, but it is carried one step farther, for, if the State Assembly fails to pass a bill initiated by 25,000 voting citizens, and the people in the subsequent (and consequent) Referendum vote in favour of it, the Assembly is thereby dissolved, and new elections take place.

The Recall of representatives or other elected officials is a popular power very recent in modern politics, though it is not altogether a new device. During the course of the French Revolution, for example, a proposal was made, though it never materialised, to provide for the removal of an unsatisfactory deputy by those who had elected him. But in recent times it is only in certain states of the United States that it has been completely carried out. The law in the state of Oregon, for example, provides that, where a prescribed number of citizens sends up a petition demanding the dismissal of an elected officer, whether legislative or executive, a popular vote shall be held on the matter, and if the vote by a majority goes against the official he shall be dismissed and a new election shall be held to fill his place for the unexpired portion of his term of office. This procedure has been adopted by other American states and has been frequently successful, though very rarely in the case of members of the legislature. In other states it has been carried farther and applied to judges, where they are elected, and even in one case (Colorado) to the decisions of such judges. In the last-mentioned use of this plan the actual ruling of the judge can be reversed by a popular vote. The Recall of all elected officers, including judges, is in force in six states of the

American Union ; that of such officers, excluding judges, in ten. As in the case of the Referendum and the Initiative, the Recall is, generally speaking, confined to the Western American states, and those few Eastern states which have adopted the other two devices have continued to look askance at this one.

No other nation in the world to-day has adopted the Recall in this way, though it is provided for in the Constitution (if it can be rightly so called) of the Russian Soviet Republic, where it is said to be an entirely dead letter. In Switzerland there is a scheme which somewhat resembles the Recall in action. There, in seven cantons, the people, by a specified majority, may demand the dissolution and re-election of the cantonal legislature before the expiration of its term. This is as far as the Recall has gone outside the United States, though there are many reformers who urge its adoption in states where it has never been attempted. (41)

IV.—ARGUMENTS FOR AND AGAINST THE USE OF THESE DEVICES

The Referendum, the Popular Initiative and the Recall seem, at first sight, such a logical development of democracy that it may strike one as strange that their adoption has not been more widely demanded. As we have said, they are more applicable to small states than to large and have only been adopted to any extent in Switzerland and certain individual states of the American Union. In Switzerland the Referendum is more in use than the Initiative, because the people are inspired rather by a democratic dogma than by an active spirit of discontent, and therefore wish more to check than to direct their law-makers. In the American states the reverse is the case, these devices having been adopted there as a deliberate means of counteracting the evils of corrupt legislatures. Even so, the Referendum in Switzerland, though it is a thoroughly live institution, has always been sparingly used. In American states it is less used now than formerly. As to the Initiative, it is much more freely used in the cantons of Switzerland than in the Confederation as a whole, where its use is con-

fined to constitutional amendments. In the American states, on the other hand, the Initiative is used constantly, and its introduction, from the popular point of view, has certainly been justified by the amount of use made of it. As to the use made of these methods in those states which have included them in their new Constitutions, we cannot yet say how well they are destined to work, for example, in a large advanced community like Germany or in a state like Esthonia where the citizens are as yet but poorly educated politically.

What conclusions, then, can we draw from the working of the Referendum, the Initiative and the Recall in those states which have tried them, and what can be suggested as to their applicability to large states? First, the Referendum corrects the faults of legislatures which may act corruptly or in defiance of their mandate. Secondly, it keeps up a useful and healthy contact between the elected and the electors, a contact not always assured by infrequent general elections. Thirdly, it secures that no law which is opposed to popular feeling shall be passed. As to the Initiative, the same arguments may be advanced in its favour. But there is a further reason for its use, namely, that while the Referendum only permits a vote of the people on matters already dealt with by the legislature, it gives no scope for popular proposals independently of the representative body. If the people, the argument runs, are capable of approving or disapproving a measure, why should they not be deemed also capable of proposing one themselves? Similarly with the Recall: if the people are given the power to choose a deputy, should they not have the right also to remove him if in their view he fails in his duty? Is not the one right the corollary of the other?

On the other hand, many arguments may be brought forward against the use of these devices. As to the Referendum, if generally adopted in a large state, it would probably cause such delay in the promulgation of laws as might deprive society of the benefits they were designed to bestow, or permit the perpetuation of the evils they were intended to remove. Another objection is that, in a crowded community like our own, the various voices which it would allow to express them-

selves would, over a long series of measures submitted; probably neutralise one another and so lead to a complete nullification of all progressive legislation. Again, under modern conditions, legislation has become so highly specialised that even a well-informed citizen could hardly hope to grasp the details of all the laws submitted for consideration—laws, be it observed, that would have already enjoyed the great advantage of being carefully weighed and debated in a legislature—and this would lead either to the enthronement of ignorance or to an indifference which would render the practice futile. Other objections besides these apply to the Initiative. “It brings before the people,” as one writer says, “bills that have never run the gauntlet of parliamentary criticism, which, if they have been carelessly or clumsily drafted, will, if enacted, confuse the law, creating uncertainty and inviting litigation.” Further, the Initiative gives opportunities to unscrupulous leaders or corrupt factions to do great harm to the state by playing upon the ignorance and irresponsibility of the crowd.

These objections to the Initiative apply even more strongly when it is used in connection with constitutional law. As we have shown in Chapters VI and VII, a Constitution is something fundamental, only to be changed after great deliberation. If it became a mass of laws inserted by popular drafting and voting, it would lose its essential character and become a conglomeration of unworkable provisions. Such a condition of things would probably lead first to anarchy and then to despotism, in which case this popular device would entirely defeat its own end. The Referendum is more suited to constitutional questions than the Initiative, and a further useful purpose to which it has been put is for resolving deadlocks between the Houses in those states where the legislature consists of two Chambers and the Constitution does not provide that the voice of one shall prevail. This has been adopted in Australia, is provided for by a clause in the new German Constitution, and has been suggested in Norway and Belgium. It was once proposed in Great Britain and might very well come into operation under a reformed House of Lords. (42)

As to the Recall, the objections are fewer. There have been instances in America in which it has worked well and to the state's advantage. But it is said by its opponents to create in officials a timorous and servile spirit. If it is applied to legislators, there is a danger of turning the representative into a mere delegate, making him the victim of the corrupt attacks of any active and intriguing clique, and this would tend to drive public-spirited men out of public life. If it is applied to the executive, it clearly tends to weaken authority and would prevent the best men from taking public office. There is no case at all for applying its use to judges, for here we enter a domain even more specialised than either of the other two departments of government. The Recall, as applied to judges, subjects them to popular caprice and so destroys that security of tenure which, as we have said, is essential to the well-being of the state. Logically, of course, the Recall of judges can only apply where they are popularly elected, and it is only in those American states where this happens that the Recall of judges has been put into practice. The Recall of judicial decisions, which, as we have said, has been adopted in Colorado and has been proposed in some other Western American states, is even more politically unsound. A more general adoption of the system of popular election as applied to judges, and the use of the Recall in connection with their tenure of office and decisions, would undoubtedly tend to a widespread looseness in the administration of justice in certain American states, by making the judges afraid to render unpopular decisions and causing them to hear and decide cases with a view rather to preserving themselves than to serving the ends of justice.

Our conclusion from this part of our inquiry is that constitutional democracy can, in the present state of civilisation, easily have put upon it a greater burden than it is yet qualified to bear. "To raise the standard of civic duty," as Lord Bryce truly wrote, "is a harder and longer task than to alter institutions." The utility and stability of political institutions depend upon the state of the community to which they apply, and it is important that institutions should not be in advance

of the capacity of the people to operate them. The one should develop as the other justifies the development. If a too rapid progress is a danger with advanced communities, it is an even greater one with backward peoples, and it will be worth while now to turn to a brief examination of those partial self-governing institutions which have been and are being built up in certain more backward communities and especially those under the British Crown.

READING

- BOWMAN : *The New World*, pp. 175-6, 193, 209-211, 275, 287, 305, 345-6, 442.
 BRYCE : *American Commonwealth*, Vol. I, Ch. xxxix. *Modern Democracies*, Vol. I, Ch. xxix ; Vol. II, Ch. lxv.
 DICEY : *Law of the Constitution*, pp. xci-c.
 GETTELL : *Readings in Political Science*, pp. 317-325.
 KEITH : *Responsible Government in Dominions*, Vol. I, Pt. iii, Ch. i.
 MARRIOTT : *Mechanism of Modern State*, Vol. I, Chs. iii, iv, xvii.
 LEACOCK : *Elements of Political Science*, pp. 166-174.
 LOWELL : *Government of England*, Vol. II, Ch. xii.
 WILSON : *State*, pp. 303-5, 396-400.

SUBJECTS FOR ESSAYS

1. Explain how the Plebiscite has been used in French internal politics in the past, and discuss its value for similar purposes in other states to-day.
2. What use was made of the Plebiscite at the end of the War (1914-18) and with what effect ?
3. How far do you consider the problem of Minorities in Europe to be a threat to the peace of the world ?
4. Explain the working of the Referendum in Switzerland.
5. To what extent is the Referendum in use in the United States of America ?
6. From the use made of the Referendum in certain Self-Governing Dominions, discuss its applicability to Great Britain.
7. What is the object of the Popular Initiative and how far does it achieve its purposes in those states which have adopted it ?
8. Compare the advantages of the Recall in modern democratic states as applied to the three departments of government respectively.
9. Compare the value of the Referendum and Initiative as applied to ordinary laws with their value as applied to constitutional amendments.
10. Do you consider that the advantages of these direct democratic devices are more apparent than real ?

CHAPTER XIV

PARTIAL SELF-GOVERNING INSTITUTIONS

I.—GENERAL REMARKS

IN its expansion and adaptation the political constitutionalism of the Western World has, as we have shown in Chapter II, gone far afield. The dissemination of the national democratic seed has sometimes borne fruit, sometimes only reaped a harvest of tares. It might, indeed, be fairly argued that the amount of ground that has so far actually proved suited to this particular form of political culture, both in the Old World and in the New, is not so great as that which has been deemed fitted for experiments in it. But political man goes on inventing methods of intensive cultivation, and his proclivity to do this produces a political problem of the first importance—namely, how far methods of self-government can be applied to politically backward peoples. And it is a problem which affects the future not only of those backward races and of Europeans in contact with them, but also of international government in which, if it is to be really effective, they must all play a part.

The application of the principle of self-government has proved easy enough in what we may call white colonies. The British people, settling in largely uninhabited temperate areas in various parts of the world, have learned how to evolve by stages their self-governing institutions. At no time, indeed, after the first few years of settlement, were these colonies in the Western Hemisphere, in the Antipodes and in South Africa, subject to the complete political domination of the Mother Country. This is seen very clearly in the case of the American

Colonies before the War of Independence, when, as the late Professor Seeley once remarked, while Britain treated the colonists economically like a pack of conquered Indians, she regarded them politically as free men. In truth, nothing in the political history of the world is more instructive than the way in which British colonists carried with them the political spirit of the people from which they had sprung and gave it play until at last it produced one of two things : either complete sovereign independence with a political Constitution which, for stability at least, may challenge comparison with any in the world, as it did in the case of the United States, or that type of autonomous political organisation which we now see in Canada, Australia, New Zealand, South Africa, and the rest.

But another question altogether was raised when it came to applying these ideals and establishing these institutions in those areas in tropical zones where no considerable colonies of white men could settle and where European governments had become the paramount power among vast native populations far behind the Western nations in potentiality for progress. Even among the more backward peoples of Europe the difficulties in the way of building up self-governing institutions have often proved very great. The experiment, for example, of suddenly creating constitutional monarchies out of the ruins of a part of the despotic Turkish Empire in 1878, in states like Servia and Rumania, was, to say the least, highly speculative, and even yet has not proved altogether successful. Again, Russia, in the opening years of the present century, failed to establish a political constitution, largely because it was a vast country with a preponderantly ignorant peasant population, and owing to the same cause has since become a prey to the domination of a minority of dogmatists. Further, some of the new states of Europe, which the War has created, have failed to adapt themselves peacefully to the constitutionalism which we have examined in these pages, and have shown a tendency to throw it off and to surrender themselves to military dictatorships, as is notably the case in Poland. The same thing has happened even in much older states, such as Spain, Greece and Italy, where nineteenth-century Parliamentarism has, at any rate

temporarily, failed, and has given place to quite different methods of government.

When political constitutionalism has failed so signally even in certain parts of Europe, we are not surprised to find an incapacity successfully to adopt it in some countries outside Europe, even though there exist in these, as in the case of the European states mentioned, a genuine national sentiment. For instance, the attempts to set up a constitutional régime in Turkey from 1876 onwards were almost farcical, and only since the Great War, which seems to have had a purgative effect and to have removed some of the more retrograde influences, has she begun to show the slightest capacity for political advancement. In Persia, again, a revolution in 1906 created a representative assembly, but, there being no executive sufficiently strong to carry out its will, it failed utterly. So far, Persia has shown great resentment against the presence of a directing hand, but until she submits to the guidance of a Power which is able and willing to educate her in the art of self-government, there is little hope for the stabilising of constitutional government there. In the more outlying parts of the world, Japan alone has been able to assimilate European political ideas and apply them in her own way to establish a stable Constitution. In China, on the other hand, the attempt to establish a constitutional republic in 1911, on the overthrow of the Manchu Dynasty, broke down and has ended in sheer chaos. (43)

These remarks suggest the value of a gradual policy in the establishment of self-governing institutions among the politically backward peoples. But it must be done under the directive force of a Great Power in control of the situation and sympathising with the aim of the ultimate political liberation of the people under its tutelage. The case of Egypt, in this respect, offers a strong contrast to that of Persia, for Egypt seems to have gained considerable political advantage from the presence of a progressive foreign Power. From the time that Britain assumed the virtual Protectorate of Egypt in 1882 (a Protectorate formally declared in 1914), opportunities were given to the Egyptians to educate themselves politically through

a representative assembly which was established in 1883 and whose powers were considerably widened in 1913. After the War, and with the collapse of Turkey, Britain considered herself free to redeem the pledge originally given by Mr. Gladstone that our occupation of Egypt should be only temporary. In response to the demands of the Egyptian Nationalist Party, which cried, "Egypt for the Egyptians," Britain in 1923 agreed to the establishment of a constitutional monarchy, with a descendant of the original Khedive family as King, under certain safeguards chiefly connected with her interests in the Sudan and the Suez Canal. But whether this will prove too precipitate a leap into the full flood of constitutionalism remains to be seen.

The policy of establishing self-governing institutions by progressive stages is clearly an experiment worth trying in the case of the native colonies, but its success depends largely on the good will of the paramount power. This is, for example, the professed intention of the United States with regard to the Philippine Islands, conquered from the Spanish in 1898-9, where a start has already been made by the introduction of a quasi-legislative body which is said to have given good results so far. The Mandate System under the League of Nations, again, seems to offer excellent opportunities for this sort of progressive plan, for in this case the area is held in trust by a Great Power which is answerable for its conduct to a body which may eventually become the true representative of the good opinion of the world. In cases like Syria under France and Palestine under Britain there is a good opportunity to test the working of partial self-governing systems through which the inhabitants of the mandated area might, with the goodwill of the mandatory power, ultimately educate themselves up to the standard of complete self-government. Britain has already begun this policy in Palestine, though the acute racial and religious problems which exist there have so far prevented its successful working. Britain, with her long tradition of progressive imperialism and her wide experience of the gradual grant of self-governing institutions, is especially well-suited to this work ; and, since it is of such vital moment to the

future political welfare of the world, it is useful to examine in some detail what she has done in this respect in certain areas under her control where native, rather than white, populations numerically predominate.

II.—BRITISH INDIA

Nowhere is this grant of political rights by stages better illustrated than in the history of the growth of the British Colonies into Self-Governing Dominions. The earlier phases of this development may now be observed in being in the case of British India and the British Crown Colonies. The history of the British in India is the story of the assumption of political responsibilities by the East India Company and their gradual transference to the British Crown. Beginning as a purely commercial venture, the East India Company, under a Charter granted by the Crown in 1600, found itself faced with greater and greater political difficulties resulting from the combined effect of the break-up of the Mogul Empire and the struggle for supremacy with the French. When the French power had been destroyed in the Seven Years' War (1756-63), the government at home was forced to intervene and two Acts were carried in fairly rapid succession—North's Regulating Act (1773) and Pitt's India Act (1784)—which attempted to order the government of those parts of India which had up to those dates passed under British sovereignty, and laid the foundations of the office of Governor-General of India as an Imperial officer rather than as a servant of the Company, while Pitt's Act established in London a Board of Control which was the beginning of the modern India Office.

This Act lasted for more than seventy years, when the outbreak of the Indian Mutiny in 1857 necessitated its repeal and the passing of a new Act in the following year. This Act abolished the East India Company, proclaimed Queen Victoria Sovereign of India (the Imperial Title was not assumed till 1877), created the office of Secretary of State for India as a separate post, and arranged that one Indian native should sit on the Board at the India Office in London (a second native

seat has since been added). The main features of this Act have since continued to be the basis of the government of British India, but several modifications have been introduced ; for since that time there have been enacted at intervals a whole series of concessions to less despotic government in India. The Governor-General of British India and the Governors of the various Provinces into which it is divided have come to be assisted in legislation and even in administration by a body drawn from an ever-widening area of recruitment in Indian society. A series of Indian Councils Acts in 1861, 1892, 1909, and during the War, gradually developed the practice of a participation by the natives, through partially representative assemblies, in the government of their country, both in the Viceroy's Council and in those of the Provincial Governors. These measures culminated in the Government of India Act of 1919, passed under the ægis of Lord Chelmsford, as Viceroy, and the late Edwin Montagu, as Secretary of State.

The preamble to this Act states that it is the intention of Britain to bring about an increasing association of Indians in the administration and a gradual development of self-governing institutions in British India as an integral part of the Empire, and to give the Provinces of India the largest measure of independence of the government of India compatible with the latter's due discharge of its responsibilities. For the Central Government the Act sets up an Upper House called a Council of State of sixty members, a proportion of whom are elected, the rest nominated (not more than twenty of these latter are to be officials), and a Legislative Assembly of 140 members, of whom one hundred are elected and the rest nominated (not more than twenty-six officials). The term of the Council is five years, of the Assembly three, but either or both may be previously dissolved by the Viceroy. Their powers are at present very shadowy. The Executive Council, which is the real force with which the Governor-General acts, is not responsible to them, but every member of it must have a seat in either the Council of State or the Legislative Assembly. Ordinary legislation passes through both Houses and this includes certain branches of finance. But the Viceroy may

enact anything to which they refuse their assent and veto anything which they may enact.

It is in the eight principal Provinces, in each of which the Governor administers those affairs not in the hands of the Governor-General, that a real measure of self-government has by this Act been inaugurated. In each of these the principle of Responsible Government, as we have seen it at work in the Dominions whose constitutions we have studied, has been, though in a modified form, introduced. Each Province has a Governor, an Executive Council and a Legislative Council. At least 70 per cent. of the membership of each Council (the number varies from 125 in Bengal to 53 in Assam) is to be elected, the rest nominated. The term is three years, if the Council is not dissolved earlier. The affairs of the Provinces are divided into two sorts—namely, reserved subjects and transferred subjects. The first are administered, as of old, by the Governor and the Executive Council, but the second are administered by the Governor on the advice of Ministers drawn from the elected members of the Legislative Council who are responsible to the Council. This Act was to stand for ten years, after which its working was to be reviewed, to see in what ways it might be modified in a progressive or reactionary direction. In this connection the Simon Commission was appointed in 1928 to inquire into the possibility or desirability of revision. Here, then, is a seed which has possibilities of development into a fine flower of responsible federal government, if only the difficulties facing it, which are, of course, enormous, can be overcome. At present the powers of the Governor-General remain very great, since it would be dangerous, under existing conditions, to place him in a position of complete responsibility to a fully elected legislature, which is the essence of Responsible Government, as we know it in the Self-Governing Dominions. For India is very different from those Dominions. It is rather a continent than a country, inhabited by over three hundred million natives, a welter of antagonisms, social, religious and political. The vast mass of its people are illiterates, some of them regarded by others, under the caste system, as something

almost less than human. It therefore lacks, in spite of those Indians, many of them undoubtedly brilliant and able men, who have made nationalism the main plank of their political platform, the essential elements which go to compose a nation-state. Apart from this inherent difficulty, there are many people who do not wish success to this scheme of progressive self-government. These opponents comprise, on the one hand, reactionary Englishmen at home and in India, some of whom, no doubt, are sincerely convinced of the dangers lurking in Indian self-government, and, on the other hand, highly educated Indian agitators who desire to precipitate a much fuller measure of Home Rule. But the Act of 1919 does, at least, drive these extremists into the position either of accepting the means thus offered of educating themselves in the intricacies of constitutional procedure, or of branding themselves as uncompromising revolutionists. And it remains a unique example of a fine endeavour to train a politically backward people in the art of self-government. (44)

III.—THE BRITISH CROWN COLONIES

A Fabian policy, similar to that just described in the case of India, is being adopted in some of the British Crown Colonies. A Crown Colony has been defined as an overseas possession of the Crown (other than British India, which is called a Dependency) that does not enjoy full powers of self-government and is often subject to the control of the Colonial Office in the management of its affairs. Nevertheless, in some of the Crown Colonies, as in British India, we now see a germ of self-government which, properly nurtured, might conceivably one day develop, as in the case of the other Colonies, into an autonomy indistinguishable in practice from political independence. In fact, some Crown Colonies present a picture of a political situation very like that which existed in the Self-Governing Dominions in the earliest days of their development; always with this difference, that they are not inhabited by a numerically preponderant white population and cannot therefore be expected to manifest the same responsiveness to those political

influences which, after all, were part of the birthright of most of the British white colonists.

Apart from those, such as Gibraltar, St. Helena, and Aden, which, being military or naval stations, are under the purely autocratic rule of a Governor or Administrator, the Crown Colonies display, in varying degrees, the characteristics of constitutionalism in embryo. In them we may examine the three departments of government and note how they are related to one another. In each of them the legislature consists of one or two Chambers partly elected or wholly nominated ; the executive of a Governor assisted by an executive council ; and the judiciary of judges appointed by the Crown and not removable by the Governor, who, in common with all other inhabitants, is subject to their ruling in matters of law, for the Rule of Law operates in Crown Colonies as in all other British territory at home and abroad.

From the point of view of the legislature and the executive, Crown Colonies may be divided into two classes. In the first class there are two sorts which, though their status is the same, differ in respect of the composition of the legislature, one sort having two Chambers, the other only one. There are three of the first sort, namely, the Bahama Islands, the Bermudas, and Barbados. In these the Upper House, called the Legislative Council, is nominated by the Crown ; the Lower House, called the Legislative Assembly, is elected from and by the inhabitants. There are eight of the second sort in this class, namely, British Guiana, Jamaica, the Leeward Islands, Malta, Mauritius, Ceylon, Cyprus, and Fiji. In each of these the Legislative Council consists of one House the majority of whose members are elected, the rest being nominated by the Crown. The legislatures of all these eleven Colonies, though they are not permitted to initiate financial legislation, have virtual control of local expenditure, and often successfully oppose measures of other kinds introduced by the executive. As to the Executive Council, in each of these eleven Colonies it has a minority of members nominated by the Governor, with the approval of the Colonial Office in London, from among the non-official inhabitants. The rest are officials appointed by

the Crown. Though he has power to override the decisions of the Executive Council which go against him, the Governor is often necessarily restrained by it, since its members are either not appointed by him or are men with great local knowledge to which the wise Governor will defer. (45)

Of the second great class of Crown Colonies there are many, including Trinidad, Grenada, and British Honduras. They are to be distinguished from the first class by two considerations, first, as to their legislatures, and secondly, as to their relations with the authorities at home. In this second class of colonies the local legislature consists solely of Crown nominees. There is no elective element whatever in the legislature, but, as many of its members are chosen from among the non-official inhabitants of the colony, it may be said to some extent to represent local feeling. Its powers are necessarily very slight. It cannot, for example, introduce legislation, and its right to control local finance hardly exists. Nevertheless, the Governor in most cases uses this legislative body to some purpose, while here again he is checked, though he cannot be overridden, by his executive council. As to the other point of difference, it is now an accepted principle of law that once the right to have representative institutions has been bestowed upon a Crown Colony, the power of the Crown to legislate for it by Orders in Council, which means in practice by the administrative edicts of the Colonial Office without consent of Parliament, comes to an end. Thus, while the eleven Crown Colonies which have partially representative legislatures are freed from the domination of a Government department in London, those with wholly nominated legislatures continue under it.

The advantage of this gradation of rights is that it offers opportunities to a backward community to pass from one stage of partial self-government to a higher one, if it proves itself capable of exercising it. In several of these Colonies we may watch the steady growth of an intelligent public opinion which shows the educational value of the system. The partial constitutions of Crown Colonies come from time to time under review by the Home Authorities, and petitions are sometimes received in London from the inhabitants displaying a lively interest in

their own political welfare. The success of this progressive plan, as so far shown in the case of British Crown Colonies, fills some reformers with great hope for the political future of mankind, and leads them, with good ground, to believe that if all the Western Powers which dominate backward peoples could be persuaded to adopt a similar policy with reference to their native subjects, the world might become a great political university the community of whose graduates might eventually secure the peace of the world.

READING

- BRYCE : *Modern Democracies*, Vol. II, Ch. lxxi.
 DICEY : *Law of Constitution*, pp. 95-98.
 HAYES : *Political and Social History of Modern Europe*, Vol. II, pp. 592-6.
 JENKS : *Government of British Empire*, Ch. iv.
 KEITH : *Constitution, Administration and Laws of the Empire*, Pt. ii, Chs. v-viii.
 LOWELL : *Government of England*, Vol. II, Chs. lvi-lvii. *Greater European Governments*, pp. 87-96.
 MUZZEY : *An American History*, pp. 451-460.
 NEWTON : *Federal and Unified Constitutions*, pp. 263-9.
 REED : *Form and Functions of American Government*, Ch. xxvi.
 WILLIAMSON : *Short History of British Expansion*, pp. 574-615.
 WILSON : *State*, pp. 262-5.

SUBJECTS FOR ESSAYS

1. Trace the rise of self-governing institutions in politically backward Europe during the second half of the nineteenth century, and suggest any lessons that can be learnt from it.
2. How far do you consider Western constitutional methods adaptable to the Middle and Far East ?
3. Compare the potentiality of Egypt for self-government with that of Persia.
4. What possibilities does the Mandate system of the League of Nations hold for educating backward races in the art of self-government ?
5. Give some account of the rise of British power in India and show how the functions of the East India Company passed into the hands of the Crown.
6. What steps had been taken by the British Government up to 1914 to train the Indians ultimately to govern themselves ?
7. What rights were bestowed on the people of India by the Government of India Act of 1919 ?
8. Compare and contrast the present government of India with that of any Self-Governing Dominion.
9. Distinguish, from the point of view of their government, between the various types of British Crown Colonies.
10. Discuss the possibility of any existing Crown Colony achieving Dominion Status.

CHAPTER XV

THE ECONOMIC ORGANISATION OF THE STATE

I.—DEMOCRACY, POLITICAL AND ECONOMIC

So far we have discussed only the political organs of the constitutional state, but something remains to be said of its economic organisation which now plays such an important part in both national and international questions. It is not our intention here to go deeply into economic problems, but merely to indicate what has been and what might be done in the constitutional state to establish a real economic democracy, by which we mean not only the attempt to control through political democracy the material conditions of life, but also the constitution of organs of economic control comparable to those already existing for political purposes. In so far as this is an extra-constitutional question—and in many respects it is by its nature bound to be so—it is beyond our province to discuss it here. But to the extent that it is either within, or capable of being brought into, the sphere of practical constitutional politics, it is necessary that we should examine it.

In the early days of the modern state the economic functions of government were fully recognised, and statesmen considered it their business to control society's economic activities, by means of laws and regulations, for the sake of national power. This condition of things was known as the Mercantile System, and it was founded on the belief that wealth consisted solely of money or precious metals whose possession meant national power. This view was universally accepted in Western Europe from the seventeenth century onward, and was the mainspring

of almost all political action in those days. In external politics it was responsible for the European and Colonial wars which filled the eighteenth century, and in internal politics led to the building up of a mass of restrictions upon trade and industry with which the state was encumbered. Then, towards the end of the century, the grand attack upon it began in Adam Smith's *Wealth of Nations*. His argument that the individual was the best judge of his own economic interests found its counterpart in the political philosophy of the late eighteenth and early nineteenth century. The theorists of the American and French Revolutions and writers like Thomas Paine, Jeremy Bentham, and William von Humboldt, in their different ways, assumed that government was a necessary evil. They therefore argued that its interference with the individual should be reduced to a minimum and that, in fact, its sole duty was to protect the individual from violence and fraud. They maintained that, government being merely a justice-dispensing institution, any economic activities on its part were entirely unjustified.

These theories seemed to be supported by the facts of the moment. In England the dissolving force of the Industrial Revolution, whose effects began to be seriously felt at the beginning of the nineteenth century, rendered all the state regulations obsolete, and, after a period of Tory reaction, occasioned by the Napoleonic War and its aftermath, an epoch of reform set in which swept them all away and inaugurated the policy of *Laissez-faire* or non-interference of the state in the economic activities of society. This epoch, broadly speaking, covered the years 1825-1870, a time which Dicey has called the "Period of Benthamite Individualism." This nineteenth-century Individualism largely inspired the rapid development of that political constitutionalism which we have examined in these pages. But the practice of *Laissez-faire* led to such abysmal misery in this period that a new conception of the economic functions of the state at last dawned, and the conviction grew that governments should take a greater and greater share in ordering the economic welfare of society, which was now shown to be unable to take care of itself in

such matters. Thus was ushered in that policy which is generally called Collectivism. This looks, at first sight, like a reaction to an earlier political practice, and the wheel might appear to have turned full circle. But the resemblance is more apparent than real; for not only was this new policy inspired by motives of humanitarianism, with which the Mercantile System certainly had nothing to do, but it continues to expand in an endeavour to save the state from disruption by forces (unknown to an earlier age) which consider political democracy in itself worthless, and deny its ability to achieve the true material interests of the mass of the people because by its nature it is already controlled by economic interests which it is hopeless to try to combat by means of the ballot box.

This policy of Collectivism, which means in essence the use of the coercive machinery of the state in the economic interests of the community, has resulted in a multiplication of the organs, because it has meant a great expansion of the functions, of government. Hence the establishment in every progressive state in the world to-day of new government departments like those we have in Britain, such as the Ministries of Agriculture, Labour, and Health, and the Departments of Mines and Overseas Trade. Collectivism is now accepted, as a principle of action, in a greater or less degree, by all political parties. The only question that divides the constitutionalists in this matter is how far the policy of collectivist action must be carried. What may be called the older political parties, while admitting the need for a certain amount of state action, remain individualist in their main tenets, and decline to accept the dogma that the State should assume the ownership of the means of production. The State-Socialists, on the other hand, believe that this should be done and that it is possible to do it without fundamentally changing the constitution of the state, as we know it. Furthermore, they assert that, if the constitutional state proves itself incapable of satisfying this economic demand which will be made upon it more and more insistently, it must give way before some other form of coercive social organisation.

Here, then, is the line of demarcation between the constitu-

tionalists and the revolutionists. The arguments of the latter are outside the scope of our inquiry, but it is necessary for us to note that those extreme socialists called Communists and Syndicalists do not contemplate the abolition of coercion, which is the essence of the state, but only urge the transference of its exercise from political to industrial organs. The founder of the Communist régime in Russia, Lenin, himself described it as a "quasi-state," and the motto of the French Syndicalists—*La classe c'est la patrie*—has the same implication. Believing the economic side of life to be the only one that publicly matters, the revolutionists hold that the mere political organisation of society is not only inadequate but superfluous. They see no way of moulding existing constitutionalism, so as to give to economic interests (which in this case mean the interests of the workers) definite organs in the state whereby their welfare may be truly guarded. Many others, who are very far from being revolutionists and who see no salvation through the State-Socialist plan, agree that one of the weaknesses of political constitutionalism is that it has not yet found a way of giving the economic interests in the state a true representation. They assert that as constitutionalism has evolved machinery for self-government in politics, so it must find a way of accomplishing self-government in industry, and that until it does, the menace of disruption will continue to face the constitutional state. The attempts that have been made in recent times to overcome this difficulty are worth examination.

II.—ECONOMIC COUNCILS IN THE IRISH FREE STATE AND THE GERMAN REPUBLIC

A common factor of all constitutional states which we have discussed is that the territorial constituency is the basis of all their electoral systems. It is this that reformers have frequently pointed to as one of the weaknesses of political democracy, and many of them feel that the territorial constituency should be, if not supplanted, at least supplemented by a functional or occupational one. Under such a system an elector would vote in the trade or profession in which he works instead of, as now,

the district in which he lives, thereby securing such a representation of economic interests as a mere division into areas can never hope to achieve. One way which suggests itself of achieving this end is by means of a reformed Second Chamber which might be made to represent this side of a nation's activities, drawing its members from occupational constituencies, while the Lower House continued, as at present, to be drawn from territorial divisions. There are already one or two Second Chambers which, as we have shown in Chapter IX, have a small element representing such interests, as, for example, the Senate in Spain (when the Constitution is at work) and in the Irish Free State, but in both cases the proportion of such members is negligible. In Italy also a plan of syndical representation in the Senate is in process of execution. There are those who believe that there exists no inherent constitutional reason why this plan should not be extended even to the point of making occupation the entire basis of election.

Another way is by establishing Economic Councils like those that have been set up under the new constitutions of the Irish Free State and of the German Republic. Article 45 of the Constitution of the Irish Free State says the Parliament

"may provide for the establishment of Functional or Vocational Councils representing branches of the social and economic life of the nation. A law establishing any such Council shall determine its powers, rights, and duties, and its relation to the government of the Irish Free State."

The German Constitution goes farther. In Article 165 it states :

"For the protection of their social and economic interests, workers and salaried employees shall have legal representation in Workers' Councils for individual undertakings and in District Workers' Councils grouped according to economic districts and in a Workers' Council of the Reich.

"The District Workers' Council and the Workers' Council of the Reich shall combine with representatives of the employers and other classes of the population concerned so as to form District Economic Councils and an Economic Council of the Reich, for the discharge of their joint economic functions and for co-operation in the carrying-out of laws relating to socialisation. The District

Economic Councils and the Economic Council of the Reich shall be so constituted as to give representation thereon to all important vocational groups in proportion to their economic and social importance.

"All Bills of fundamental importance dealing with matters of social and economic legislation shall, before being introduced, be submitted by the Government of the Reich to the Economic Council of the Reich for its opinion thereon. The Economic Council of the Reich shall have the right itself to propose such legislation. Should the Government of the Reich not agree with any such proposal, it must nevertheless introduce it in the Reichstag, accompanied by a statement of its own views thereon. The Economic Council of the Reich may arrange for one of its own members to advocate the proposal of the Reichstag.

"Powers of control and administration in any matters falling within their province may be conferred upon Workers' Councils and Economic Councils.

"The Constitution and functions of the Workers' and Economic Councils and their relations with other autonomous social organisations are within the exclusive jurisdiction of the Reich."

Such councils, it must be understood, are something quite different from bodies like the Chamber of Commerce in England and the National Association of Manufacturers in America, which have become merely trade-protecting societies, and which, far from combining with the government for their common advantage, are chiefly concerned with preventing government enterprise. But what reality of power such bodies as the suggested economic councils are likely to have in Ireland, with politics in their present transitional state in that country, it is impossible to say. In Germany, at all events, these councils appear already to have gained considerable importance, and the Economic Council of the Reich has been called by an authority on the subject "a Parliament of Industry." Nevertheless, the question seriously arises whether such a Parliament of Industry can be given any sovereign powers, and, if not, whether it can be really effective. The German plan has been described as a "parastatal" system, by which term is meant a régime of two equal forces within the state—one political, the other economic. This recalls the plan suggested by the Guild-Socialists in England during the decade preceding the War. This was a variant of the Syndicalist proposals, but,

whereas Syndicalism demanded the complete abolition of political organs, Guild-Socialism proposed to retain the state, as we know it, for all non-economic purposes. The organs of economic government, however, were, according to this school of thought, of such prime importance that they must be not subordinate to but co-ordinate with those of political life. In other words, there must be two parliaments with equal power, one guarding society's political interests, the other its economic welfare.

Here, then, is raised the whole question whether it is possible thus to divide the sovereignty of the state. One writer categorically asserts that there is no *via media* between State-Socialism and Syndicalism, meaning that sovereignty, being indivisible, must work its will either through parliament as a political organ, which will brook no interference from economic associations, except in so far as it freely accepts them, or else through a parliament of industry with absolute powers, which is the essence of Syndicalism.* The same question arises also in the case of two Chambers, one political, the other economic. Could they, that is to say, be truly co-ordinate bodies? The point, then, is whether the constitutional state can voluntarily share its sovereignty with a co-equal force, and whether, if it submits to violence, it can be said to exist any longer. Violence was not lacking even in the doctrine of the Guild-Socialists (an otherwise very pacific body of citizens), but only for the purpose of setting their programme to work. A general strike (an anti-constitutional method, be it observed), they argued, would force the state to take over the ownership of the means of production which it would then hire out at a rent to the appropriate guilds or unions. The latter would, thereafter, control everything economic (wages, prices, conditions of labour, etc.) connected with their own trades.

The scheme which appears in the German Constitution arrived in a rather different way. There was violence, indeed, but it arose fortuitously, so to speak, out of the circumstances attending the end of the War. In the German Revolution of

* This was the point at issue between the Government and the Trade-Unions in England in the General Strike of 1926.

1918 Councils of Soldiers and Workers were set up, and for a moment very nearly succeeded in overthrowing the parallel political revolution. The latter, however, was destined to prevail, and evolved the Republican Constitution whose various aspects we have examined. Yet the Councils proved sufficiently influential to bring Article 165 into the German Constitution, though, as the last paragraph of that Article shows, they are completely within the jurisdiction of the political authority. In Russia, on the other hand, in the Revolution of 1917, although similar parallel régimes existed for a time, each struggling for supremacy, the leaders of the Workers' Councils or Soviets did succeed in overwhelming the ordinary political organs. In the Constituent Assembly of January 1918, which had been elected to promulgate a new political constitution, the Bolsheviks moved that "Russia is a republic of Soviets," and when this was heavily defeated, Lenin, by means of a *coup d'état*, dissolved the Assembly, on the ground that it was "too bourgeois." From that moment the Bolsheviks or Communists have held the field in Russia, and whether we regard the existing system there as a properly organised Soviet Republic or as the dictatorship of a communist minority, we are bound to admit that the sovereignty of the governing authority remains intact; for in this case the normal political organs have been completely overthrown and in their place now stands either a supreme industrial authority or an armed despotism, according to whether the Soviet Constitution of July 10, 1918, works or not. (46)

While, therefore, Germany has attempted to meet the demands of economic democracy in a perfectly constitutional manner, by means of the so-called "parastatal" system, Russia, in assuming that the only section of the community worth consideration is the "proletariat," has passed beyond the bounds of constitutionalism in establishing a Communist régime. Over against these two methods we have the plan of constitutional State Socialism, advocating the assumption by the state, under parliamentary methods, of the means of production, which has nowhere yet been fully tried, beyond the public ownership in some states of such public utilities as

railways. There remains yet another way in which the economic organisation of the state has been attempted, and this is in Italy, by means of what is called the "Corporative State," which we will now examine.

III.—THE CORPORATIVE STATE IN ITALY

In previous chapters we have tried to indicate in what respects Italy may be regarded as still a constitutional state, in spite of the attacks which have been made in recent times upon the constitutionalism founded in 1848. We have pointed out that that Constitution is a completely flexible one; that the legislature remains; that in it the national character of the deputy is emphasised; and that the executive, though tending to become fixed, still respects parliament enough to seek its sanction for administrative acts. Furthermore, although the existing régime was, indeed, inaugurated as the result of a revolution, the political organs were sufficiently respected to transform the head of a militia into a quasi-constitutional Prime Minister. It is this which differentiates the Fascisti régime in Italy from the Bolshevik régime in Russia; for in the latter case, as we have said, the revolution completely overthrew the old political machinery which, be it remembered, was not that of a constitutional state, and thus freed the revolution to carry out a full-scale economic experiment without the encumbrance of tradition. Of Fascismo one observer has said that "it is, indeed, capable of being as truly revolutionary in character as Bolshevism, with which it has much in common, both in practice and in doctrine." But while the Soviet scheme is essentially doctrinaire and proceeds from a deliberately assimilated economic theory, conceived for circumstances entirely absent in Russia at the time of its application there, the Fascisti movement grew as a practical defence against a rapidly developing state of anarchy, and legalised the revolution that it carried by adapting to its needs, instead of destroying, the existing political machinery.

None the less, as we saw, the Fascisti movement was at first an extra-constitutional one. It had to be so, because

the Parliament in Italy had succumbed to the demands of Syndicalism, a surrender which could be undone only by a weapon equally outside constitutional action. Perhaps the strangest thing about this revolution is that its leader, Signor Mussolini, was, in his earlier days, himself an extreme Socialist of the Syndicalist type. But his opinions, largely owing to the War, underwent a series of modifications, and he emerged at the end of it more nationalist than revolutionist. But his recent innovations in the economic organisation of the state prove that he has retained a certain Syndicalist attitude of mind. It is, in fact, the conjunction of these two tendencies—Syndicalist and nationalist—in Signor Mussolini and some of his highly-placed disciples, which has brought to maturity a new scheme of social and industrial organisation under the protection of the state. This new politico-economic régime is known as the Corporative State. Though it is a new scheme, yet it has elements in common with both the Syndicalist and Russian Communist plans. The way in which it differs radically from Syndicalism is that under it the state, far from being abolished, remains supreme, and that the new industrial organs are to be completely subordinated to it. The way in which it differs from Russian Communism is that it is concerned to protect every section of the industrial community, whereas the so-called Soviet Constitution has as its sole purpose, according to its opening words, the securing only of the "Rights of the Labouring and Exploited Masses."

The Corporative State in Italy is now in actual process of construction. It is founded upon certain laws passed in 1926 and 1927 which we shall examine in a moment. But the business of exploring its possibilities began as long ago as August 1924, when a Commission, under the presidency of Signor Gentile, a leading Fascist and member of the Cabinet, was set up, and the new laws are the result of its recommendations. The report of the Gentile Commission attempted to outline the theory of the Corporative State. The report examined and criticised all the methods so far used in various states to cope with the problem of industrial organisation. Trade-Unionism in England, the Trust Movement in

the United States, the Marxist Theory and its application in Russian Communism, the Economic Councils in Germany, and Liberal Democracy which failed so abysmally in Italy—all these, it said, have certain incorrigible weaknesses. If they are concerned to protect the producer they are interested in one section only of the producing community; that is to say, either the worker-producer or the employer-producer. If they are concerned to protect the consumer, they seem to forget the importance of the producer. As to the Socialist schemes, they ignore the power of private initiative, and are, therefore, against human nature. The defect common to all of them, concluded the Commission, is that they tend to weaken the supremacy of the state.

This last, then, is the key to the plan of the Corporative State, and in this respect it is in line with the whole purpose and essence of the Fascisti movement, which is that everything must be sacrificed to the national state. The state must be strong; government must defend itself against all attacks upon it; and there must be an "intense exercise of all the national energies"—these form the very basis of Signor Mussolini's own definition of Fascism. The Corporative State is founded on what the leader calls National Fascist Syndicalism, in contradistinction to Socialist Syndicalism. How do they differ? The old Italian Syndicalists organised, like other Socialists, exclusively in the interests of the Proletariat. Formerly in Italy, as in most other countries, the argument runs, Capital, Manual Labour and Intellectual Labour regarded themselves as separate and mutually antagonistic entities outside, if not, indeed, above the state. Fascist Syndicalism ends this opposition by subordinating all three sections equally to the national interest. But it must be carefully noted that according to Fascismo the state is not capable of efficiently performing productive economic functions. Private initiative (*i.e.* Capitalism) is by no means condemned as it is under Socialism, for it is regarded as necessary to the economic progress of society, but its rights and liberties are not allowed to be above the state.

In this spirit and to this end the new laws have been passed.

In making the industrial guild (syndicate or trade union) the basis of the corporate state, these laws are regarded as introducing a new key to social and political health by crowning and codifying the work of the Fascisti Revolution and at the same time reviving a tradition of Italian life; for formerly the political life of the Italian republics was based on the trade guilds, and, in fact, when the discussions for the creation of the Constitution in 1848 were going on, proposals were actually made in favour of the representation of various trades and corporations, though the suggestions were not adopted at that time. Thus this revolution is given an air of historical constitutionalism. In discussing the new law, three documents have to be considered :

(1) The Syndical or Trades Union Law passed by the Chamber of Deputies and Senate on March 11, 1926, and coming into force on April 3, 1926.

(2) A Decree of July 1, 1926, which filled in the details of the Law.

(3) The Labour Charter published on April 21, 1927.

The law of April 3 is divided into three parts. The first arranges for the Constitution and control of Syndicates or Unions of three sorts—the workers, the employers, and the intellectual workers (*i.e.* artists, writers, etc.). There are to be six national confederations of employers, six of employees, and one of the professional classes, each of the thirteen under a General Council. They are to be organised separately, but since the passing of the law the Ministry of Corporations has been set up to unite these collateral structures. At least 10 per cent. of those working in any industry must belong to the appropriate syndicate for it to be recognised by the state, but all those employed or employing in the industry are subject to the new restrictions and penalties imposed whether they belong to the syndicate or not. Moreover, every citizen must make to his appropriate syndicate, whether a member or not, the assigned annual contribution, which is one day's pay, and as no protection will be offered to any but the state associations, all non-state unions will gradually die of inanition, and their members be driven into the state unions out of sheer self-

defence. The second part of this law establishes special courts for the settlement of all disputes between capital and labour. The courts, known as the Magistracy of Labour, are to consist of Judges of the Court of Appeal assisted by expert assessors, who are specialists in the industry concerned. Recourse to the Magistracy of Labour is obligatory, and its decisions are final and binding on all parties. The third part of the law absolutely prohibits all strikes and lock-outs, attaching a schedule of the most rigorous penalties for its breach.

The Decree of July 1, 1926, gives details as to the operation of this law. For example, it states that any person over the age of eighteen may join a syndicate if of good moral and political conduct, which presumably secures that all future entrants into trade unions shall give proof of conformity to Fascisti doctrine. On the day following this Decree the Ministry of Corporations was established and the machinery for the scheme was then complete, the working out of its details being left to administrators and organisers whose business was to assist the recruitment of these official societies. Thirdly, came the Charter of Labour, which had the force of law, though much of it, it was said, would require drafting in legislative form. This Charter appears to be the very bible of the Fascisti Corporative State. The purpose of labour, it says in its Second Article, "may be summed up as the well-being of the producers and the development of the national strength." "Professional or syndical organisation," it adds, "is free, but the recognised syndicate alone, under the control of the state, has the right of legally representing the employers and employed, of stipulating for collective labour contracts for all belonging to its category and of imposing contributions on them. The collective contract is the expression of the solidarity of the various factors in production : is the means of reconciling the opposing interests of employers and employed and subordinating them to the superior interest of production."

Here, then, we have a full-fledged scheme of industrial organisation. But how is it to be made an integral part of the state machine? This question has been answered,

satisfactorily or not according to one's point of view, by the new Electoral Law of 1928, whose details were worked out by the Grand Council of the Fascist Party. This Law retains the main advantage of the Electoral Law of 1924 which, as we noticed in Chapter XI,* was that, the whole country being treated as one constituency, a working majority in the Chamber was assured to the party gaining a bare majority over any other single party. The new Law, however, goes very much farther in this direction, for it abolishes opposition altogether by the same expedient as that by which it proposes to bring about occupational or functional representation. In accordance with this law, deputies in Italy are now elected by the Syndicates of Employers, Employees and Professional Classes which are "juridically" recognised as organs of the Corporative State, and certain other social bodies—cultural, educational, or charitable—designated every three years by the Government on the recommendation of a Committee composed of five Senators and five Deputies. The General Councils of the thirteen National Syndicates meet in Rome and there propose the names of 600 candidates, allotted to the various syndicates in proportion to their national importance. The other bodies select 200. This list of 800 names is then submitted to the Fascist Grand Council, which selects any 400 of them after adding to them, if they wish, any persons of distinction not originally included. The final list of 400 is announced in the official *Gazette*, and three weeks later is submitted to the electorate of the country, voting as one whole constituency, and consisting of all males of twenty-one (or over eighteen if married with children), provided they have paid their contribution to their appropriate syndicate. The ballot paper bears the formula, "Do you approve the list of Deputies designated by the National Grand Council of Fascism?" and the answer to be given is simply "Yes" or "No." If a bare affirmative majority is given, then the 400 form the Chamber of Deputies, which is thereby reduced in membership by 160. In the unlikely event of the list being defeated, alternative arrangements are made resembling the law of 1924, hereby superseded,

* See p. 251.

with the proviso that the new elections shall be held only in those provinces where the Fascist organisations have more than 5,000 members. Besides this, arrangements are to be made for the General Council of each of the thirteen National Syndicates to nominate one member of the Senate.

This Electoral Law was passed by the Chamber of Deputies and the Senate, and came into force in 1929, when the General Election resulted in an overwhelming victory for the official list of candidates. It is clear that Parliamentary Government, as normally understood and as we have examined it in this book, is hereby abolished, for this Electoral Law introduces an entirely new form of representation, which Signor Mussolini himself calls "the true democracy." "The other democracies," he said in February 1928, "are gnawed at by a terrible malady, namely, the absence of understanding. On the one side is Capitalism, shut up in its crenellated tower, on the other side is Labour, organised and armed by the double force of Socialism and Syndicalism covering the plain and always ready to deliver an assault against the dominating tower. And between the two camps, beneath a fragile, futile tent—the bourgeois state." "Parliament," he said, in presenting the new electoral scheme to the Senate, "is not outside the State, but neither is it above it. It is simply one of its fundamental organs. Members of Parliament are not, therefore, chosen merely on some abstract principle like popular election. They must owe their function to something logical, concrete and practical." The "something" he believes he has discovered in the new electoral plan. This Law, then, is an avowed attempt to put an end to the régime of Liberal Democracy and to establish in its place a form of functional representation, or rather delegation, which, far from weakening political sovereignty, shall merely subserve it. At the same time, in fairness to the framers of the Electoral Law, it should be added that they have proclaimed it to be only an interim measure, and have announced that the selective supervision by the Fascist Grand Council of the electoral lists drawn up by the Syndicates is only "one first step" towards the ultimate goal of completely substituting the syndical organisations as the source of power

in the state. In the meantime, however, the supremacy of the Grand Council in the Fascist State is undisputed, and by the very latest law of September 1928, to which we have referred earlier, that supremacy has even been given statutory force.

Comparing the general scheme of the Italian Corporative State with existing forms of industrial organisation in other states, we note the following points. First, the state not merely recognises trade unions and protects them by special laws, as happens, for example, in Britain, but forces all workers, intellectual, technical, and manual, whether employing or employed, into them by making this the criterion of eligibility for citizenship. Secondly, the existence of the Magistracy of Labour forces all disputants to seek the arbitration of the political authority. This is not entirely new, for it also exists in Australia and New Zealand, but not in our own country. Thirdly, the absolute prohibition of strikes and lock-outs is an objective which has never yet been reached. It can only be done by purely military means while the social conscience remains as it is in most countries to-day. And it, of course, destroys the root principle of economic combination, by depriving both Trade Unions and Employers' Associations, as we understand them, of the right to use the only instrument of force at their disposal. By offering the enforced acceptance of state arbitration in exchange for the rights of employees to strike or employers to lock-out employees, it calls upon the citizen to put implicit trust in the state as the true guardian of his economic interests. A scheme of occupational representation in the body politic is, therefore, the necessary complement of such an industrial organisation of society, but it remains to be seen whether such representation as the average citizen will gain from the new Electoral Law will satisfy him in this matter.

At least, the documents of the Constitution of the Corporative State clearly show, as one writer says, that "Fascism is not another name for reactionary capitalism, but is new labour ideology evolved by men who have passed through the various schools of socialism, syndicalism and Marxian communism." The Labour Charter, in particular, appears to have been well

received by the labouring classes who, it is said, feel that it secures them more firmly than ever before in their economic and political rights. At the same time, the Corporative State is a structure which marks so distinct a breach with traditional constitutionalism that only time can tell whether it is destined to be successful. And even if it works satisfactorily in Italy, it by no means follows that such a structure could be successfully erected in any other state. (47)

With this very latest experiment in constitutional politics we may well bring to an end our review of those additional matters which, as we said at the beginning, lie on the edge of our main subject, and may rightly consider that we have cleared the ground sufficiently to proceed to a proper analysis of the Constitution of the League of Nations.

READING

- BRYCE : *Modern Democracies*, Vol. II, Chs. lxxviii-lxxix.
 BURNS : *Political Ideals*, Chs. x and xi.
 DICEY : *Law and Opinion*, Introduction and Lectures iii-iv.
 DUNNING : *Political Theories*, Vol. IV, Chs. ii, iii, vi.
 JENKS : *State and Nation*, Ch. xvi.
 LASKI : *Grammar of Politics*, Pt. I, Ch. vii ; Pt. II, Ch. ix.
 LEACOCK : *Elements of Political Science*, Pt. III, Chs. i-iii.
 MACIVER : *Modern State*, Ch. ix.
 MILL : *Principles of Political Economy*, Book V.
 SIDGWICK : *Elements of Politics*, Chs. iv, x, xxviii.
The Annual Register for 1927, pp. 87-91 (for a copy of the Italian Labour Charter, April 21, 1927).
The Contemporary Review for 1928 : (1) January : Article on "Creating a Corporate State in Italy," by Capt. Wedgwood Benn. (2) April : Article on "Parliamentary Reform in Italy," by Prof. G. Salvemini.

BOOKS FOR FURTHER STUDY

- COLE : (1) *Guild Socialism Restated*. (2) *Social Theory*.
 FINER : *Representative Government and a Parliament of Industry*.
 JONES : *Social Economics*.
 LASKI : *Foundations of Sovereignty*.
 LOWELL : *Essays on Government*.
 NITTI : *Bolshevism, Fascism, and Democracy*.
 RUSSELL : (1) *Prospects of Industrial Civilisation*. (2) *Roads to Freedom*.
 SALVEMINI : *Fascist Dictatorship*.
 VILLARI : *Italy*.
 WARD : *Sovereignty*.

SUBJECTS FOR ESSAYS

1. Examine the statement that political democracy by itself is worthless.
2. Account for the growth of modern Collectivism and explain the circumstances in which it gradually replaced the policy of *Laissez-faire*.
3. Suggest ways in which Second Chambers might be made to represent economic interests in the modern state.
4. Explain the proposals in the German Constitution of 1919 for establishing economic councils, and compare them with those in the Constitution of the Irish Free State.
5. Compare and contrast the effects in political organisation of the German with those of the Russian Revolution.
6. "There is no *via media* between State Socialism and Syndicalism." Discuss this statement in reference to the proposals of Guild Socialists for the establishment of a Parliament of Industry having co-ordinate powers with those of the political parliament.
7. In what respects can the reorganisation of the Italian state be described as constitutional?
8. Discuss the scheme, as so far laid down, for the establishment of a "Corporate State" in Italy.
9. Do you consider it possible to replace the territorial constituency, as it exists in most states to-day, by an occupational one?
10. Do you think it likely or unlikely that Britain will ever have to cope with a revolution either of the Fascist or of the Bolshevik type?

CHAPTER XVI

THE CONSTITUTION OF THE LEAGUE OF NATIONS

I.—PROJECTS OF INTERNATIONALISM

At the beginning of this book we said that we should finally deal with the Constitution of the League of Nations, and that part of our object in analysing and classifying existing constitutions was to approach in a more systematic and scientific manner an examination of the actual machinery of the latest attempt at a World-Constitution. President Wilson, in his message to the Provisional Government of Russia, in May 1917, said that through the War "the brotherhood of mankind" might cease to be "a fair but empty phrase," and be given a "structure of force and reality." It is with the structure rather than the ideal which inspired it that we are concerned here, for we are dealing with constitutions, and it is the Constitution of the League of Nations, as a set of organs to improve the harmonious working of international relations, that we must examine. It is manifestly not possible to compare it with anything of its kind contemporary with it. But we can compare its effectiveness as a machine to achieve its end—namely, international peace and progress—with that of the constitutions we have examined to achieve theirs—namely, national peace and progress. And we may compare it as a structure with the projects of internationalism which have gone before it.

For it is necessary to realise at the outset that the establishment of the League of Nations is only a step forward in that

evolution of international relations which has been going on for centuries. A demand for an international organisation to prevent war has followed every great European conflict since the modern states-system emerged. The general burden of such demands has always been that states ought to be subjected among themselves to a system of law and order analogous to that to which individual citizens are subjected in the smaller political units in which they live! At first such ideals did not get beyond the pages of the books of a few intellectuals, and there is a long succession of writers who have worked out paper-schemes for such ends—for example, Pierre Dubois as early as the fourteenth century, Erasmus in the sixteenth, Henry of Navarre in the seventeenth, the Abbé de St. Pierre, Rousseau and Kant in the eighteenth. The next stage, following the Napoleonic Wars, was much more closely in touch with reality, and, ceasing to be confined to a few idealists (though there were still some of these), practical schemes of international organisation passed under the control of dominant personalities and powers.

Thus it was that the Concert of Europe came into being. It began as a Christian Brotherhood of Monarchs, inspired by the Emperor of Russia, under the title of the Holy Alliance, but this, which was confined to three Powers—Austria, Russia, and Prussia—degenerated into a mere engine of repression to crush the dawning Liberalism of the smaller states of Europe. In the form, however, in which it was strongly supported by Castlereagh, the British Foreign Minister, the Concert of Europe was much more effectually founded on a system of occasional conferences of the Great Powers. From this scheme, which lasted from 1814 to 1822, the British, however, were at length forced to withdraw owing to the fact that Metternich was determined to use it for his despotic purposes, and with the Congress of Verona (1822) and the coming of Canning to the Foreign Office the Period of the Congresses, and with it the hope of a Confederation of Europe, was at an end. Yet the Concert of Europe extended its life, though in a somewhat emaciated form, it is true, beyond this early period, and rallied from time to time to cope with such problems as the

Eastern Question, especially in 1878. But it was too great a wreck to be revived at the time when its activity was most urgently required, namely, in the days of the breathless diplomatic struggle immediately preceding the outbreak of War in 1914.

✓ Meanwhile, another attempt, again emanating from a Russian Czar, had been made to secure the triumph of diplomacy over arms. This was by the establishment of the Hague Conferences. In 1899 the envoys of twenty-six states met at The Hague to discuss such questions as the limitation of armaments, the humanising of the laws of war, and the employment of mediation and arbitration by parties to international disputes. It concluded with three conventions which were solemnly ratified by all the greater Powers. The second Hague Conference, attended by the delegates of fifty-four states, met in 1907. It elaborated the legislation (if we may call it that) of the earlier Conference and produced a vast bulk of memoranda and agreements. The Hague Conferences, no doubt, were of use as pioneers, so to speak, of the movement that was to come, but their decisions lacked effectiveness, and amid the clash of arms their laws were silent. The Hague Conferences, in short, had no Constitution. Moreover, they were struggling to build a Palace of Peace at just the time when diplomacy was putting its faith in another scheme, called the Balance of Power, which, in fact, since it was founded upon the baneful system of opposing alliances, made war at length inevitable.✓

The War, however, brought a third stage in the development of international projects. Whereas, in the first stage, efforts were confined to a few idealists, and, in the second, to prominent individuals, in this third period, following and owing to the War, the establishment of a real world-organisation became the aim of large numbers of the citizens of every advanced political community. During the second half of the War there was a positive fever to put forward schemes for the constitution of machinery for Peace which should be more permanent and effective than any which had gone before. It was thus that the public, and possibly also the politicians,

were educated up to the point of establishing such a machinery as an integral part of the Peace.

II.—FUNDAMENTAL CONCEPTIONS BEHIND THE LEAGUE OF NATIONS

In attempting to outline the fundamental conceptions behind the League of Nations, we cannot do better than follow the line laid down in the first part of Lord Cecil's excellent article in the Twelfth Edition of the *Encyclopædia Britannica*. The essential conditions and objects of a League of Nations are (1) the maintenance of peace, and (2) the solution of international disputes by methods of law, if and when the law exists, and if it does not exist, then by political methods—*i.e.* by public debate, impartial investigation and conciliation on the basis of accepted canons of justice and right. Such co-operation implies the development of rules and the general acceptance of a common machinery, which the smaller states, as well as the larger, shall freely support.

The minimum of essential rules and machinery is as follows: (1) Rules laying down conditions of membership; (2) agreements, into which all members must enter, to meet in full conference from time to time; (3) a smaller organ than the full conference to meet when executive action is required; (4) some sort of secretariat of a permanent nature with the duty of preparing work for the organs of the League, keeping records, and generally acting as an organising agency. The minimum mutual obligations to be assumed by the members of a true League may be summarised thus: (1) agreement not to go to war without submitting the dispute to the League; (2) acceptance of the means of common action against members who break this fundamental rule; (3) rules for the peaceful settlement of disputes; (4) the abrogation of all treaties inconsistent with their obligations as members of the League; (5) plans for the settlement of disputes including conciliation, arbitration and judicial verdict. This last is one of the most important because it means the establishment of a permanent Court of International Law.

Finally, the principle must be generally accepted that it should be within the province of any state, which regards any matter as affecting the peace of the world, to demand a meeting to consider such matter. This right was vaguely implied in the Hague Conferences, but any true League of Nations must give this principle full and unqualified recognition.

All the above-mentioned essential elements were included in the Constitution of the League of Nations as established at the end of the War. It happened that a great idealist who believed in all these needs was the most powerful individual in the world at that moment, for he was the "Chief Magistrate" of that state without whose help the War would certainly not have ended so soon, and possibly not at all in the way it did end. This was Woodrow Wilson, President of the United States. It is true that his devotion to his ideal destroyed his power in his own country, but his work remains in the Covenant of the League of Nations. This is a document with twenty-six Articles, and it was made an integral part of the Treaty of Peace between the Allies and Germany, so that every signatory to the Treaty necessarily bound his state to support the League, even though, if it was one of the states allied to Germany in the War, it was not allowed at first to join it. The Covenant of the League was first signed by the thirty-two signatories to the Treaty of Versailles. In 1921 forty-eight states were members of the League. Since then Austria and Germany have been added, and in 1929 the total membership was fifty-five states. (48)

III.—THE ORGANS OF THE LEAGUE

Here, then, is a Constitution for international purposes, guarding the destinies of fifty states, including about 75 per cent. of the world's total population and about 65 per cent. of its total land area. Article 1 of this Constitution (or Covenant) states the rules of membership. Any fully self-governing State, Dominion, or Colony, not an original member, may become a member of the League if its admission is agreed to by two-thirds of the Assembly of the League, provided that it gives

effective guarantees of its sincere intention to observe its international obligations and agrees to accept such regulation of its armaments (military, naval, and air) as may be prescribed by the League. Any member of the League may, after two years' notice of its intention to do so, withdraw from it, provided that all its international obligations under the Covenant shall have been fulfilled at the time of the member's withdrawal.

Articles 2 to 7, and 14 deal with the organs of the League. They are four in number, namely, (i) the Assembly, (ii) the Council, (iii) the Secretariat, and (iv) the Permanent Court of International Justice. Let us now examine each of these in turn.

(i) *The Assembly*.—The Assembly consists of not more than three representatives of every member of the League, but at its meetings, though the three representatives may be present, each member of the League shall have only one effective vote. The Assembly, says the Covenant, shall meet at stated intervals or as occasion may require at the Seat of the League or at such other place as may be decided upon. Actually, since the inception of the League, the Assembly has met annually at Geneva, beginning on the first Monday in September, and its deliberations usually last about three weeks. It may deal at its meetings with any matter within the sphere of action of the League or with any subject affecting the peace of the world. Except where otherwise expressly stated in the Covenant, all decisions at any meeting of the Assembly require the agreement of all the members of the League represented at the meeting. (This also applies to the Council.) But all matters of procedure require only a majority. The Assembly alone can admit members, and it controls the appointment of the non-permanent representatives on the Council. No fundamental change in the size of the Council can take place without the consent of the Assembly, and the Secretary-General and Council submit to it the budget for the maintenance of the League.

(ii) *The Council*.—The Council now consists of five permanent members, representing Great Britain, France, Italy, Japan, and Germany (U.S.A. was to have occupied the original fifth place, but no representative ever came thence, and the recent

inclusion of Germany has raised the number to the proportion originally intended), and nine non-permanent members, representative of nine small powers, chosen by the Assembly. At first there were only four non-permanent members, but the Covenant empowered the Assembly to enlarge this branch of the Council or change the states represented therein. The present practice, adopted in 1926, is that the nine non-permanent members are elected for three years. Three of these retire each year and are ineligible for re-election for the next three years, unless the Assembly, by a two-thirds majority, declares them to be eligible, and this it can do only for three of the nine. The Council, according to the Covenant, meets as occasion requires, but, unlike the Assembly, at least once a year. In practice it meets four times a year, namely, in March, June, September (when it holds two sessions) and December. It has also held extra-ordinary meetings outside these fixed ones. The Council is in no sense an Upper House. Its powers are, with one or two exceptions, similar to those of the Assembly, for either may deal with any matter within the sphere of the League's action. They are largely independent bodies, the chief difference being that the Council can be more easily convened. Naturally, the ultimate decisions must be taken by the Assembly in which all the states are equally represented. Nor, again, are the relations between Council and Assembly those normally existing between Cabinet and Parliament, though this is a closer parallel than the other, and in practice seems to be exerting an irresistible influence on the relationship of these two organs. "In actual fact," as a correspondent in the *Times* said in 1929, "despite the Covenant, which gives the Council and Assembly equal executive powers, the Council is gradually becoming an executive, while the Assembly tends to limit its work to deliberation and advice."

The Assembly was intended to be the strength of the small states, since they greatly outnumber the large, and all are equally represented, while the Council was to be the principal seat of power of the great nations. The relations between the two may become exceedingly delicate, as was shown in the

recent controversy concerning the admission of Germany to a seat on the Council. The Council has no fixed place of meeting, and its sessions have already been held in various Continental cities besides Geneva. (49)

• (iii) *The Secretariat*.—Articles 6 and 7 of the Covenant provide for the establishment of a permanent Secretariat and the nomination of a Secretary-General who shall make all appointments to the Secretariat with the approval of the Council. It is added that all posts on this body shall be open equally to men and women. The Secretariat of the League may be said to correspond to the permanent Civil Service in a state. It is an entirely non-political body, and is the only organ of the League (apart from the Permanent Court of International Justice) functioning continuously. Unlike the members of the Assembly and the Council, “the members of the Secretariat,” as the Council’s Report of 1920 stated, “once appointed, are no longer the servants of the country of which they are citizens, but become, for the time being, servants only of the League of Nations. Their duties are not national but international.” The secretariat is permanently established at Geneva and has increased rapidly in size since its foundation. It is a body of experts with their assistants, divided into three special branches, gathering and sifting information for presentation to Council and Assembly. Its three divisions are : (1) the General Secretariat, which includes several Under-Secretaries-General for special missions, as, for example, of the Committee of Jurists ; (2) the Technical Sections—*e.g.* Information Section, Transit and Communication Section ; (3) Administrative Departments for the internal administration of the Secretariat—*e.g.* Finance, Library, Registry. Broadly speaking, the chief function of the Secretariat may be said to be to maintain the liaison between the Council and Assembly on the one hand, and the various technical organisations, commissions and officials of the League, on the other.

(iv) *The Permanent Court of International Justice*.—Article 14 states that the Council shall formulate and submit to the members of the League plans for the establishment of a Court of International Jurisdiction which shall be competent to hear

and determine any dispute of an international character which the parties thereto may submit to it, and also be enabled to give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly. In accordance with this article, a Protocol to the Covenant, consisting of sixty-four articles, was drawn up in 1920, and was unanimously approved by the First Assembly of the League at Geneva in December of that year.

Thus a Court was established at The Hague with a limited number of judges holding regular sessions and giving decisions not on rules laid down by the parties, but according to the principles of law. The difficulty, of course, was that not all sovereign states could be represented on the judicial bench and that the judges chosen would have to be apportioned to the different systems of law. Finally, it was decided to have a bench of eleven judges—five representing the Latin Group of States, three representing the Germanic and Scandinavian Group, two the Common Law Group (Britain, British Dominions and the United States, if and when she agreed), and one for Asia. By Article 13 of the Covenant, the Court is only competent to determine disputes which the parties thereto submit to it. But the Court is definitely one, not of arbitration, but of justice, though it is empowered to act as an arbitrator at the request of the parties.

IV.—THE WORK OF THE LEAGUE

The League of Nations, then, is a fully-constituted piece of international machinery. It has four organs, corresponding, in a measure, to those of a normal body politic—a legislature (Assembly and Council), a body with strictly limited executive powers (the Council), a clerical organisation like a permanent civil service (the Secretariat), and a judiciary (the Permanent Court). The great political purpose of this organisation is the prevention of war, which question is dealt with in no less than nine separate articles of its Constitution (the Covenant), and embraces one-third of the whole text, not including the long protocol on the establishment of the Permanent Court

of Justice. As to agreements not to resort to war, the Covenant embodies most of the securities regarded unanimously at the time as practicable. Members agree that if a dispute arises between them, they will submit the matter to inquiry, and will not, in any case, resort to arms until three months (with a further delay of six months) after a report has been issued by the Council of the League (Article 12).

In case of a dispute which is "juridical" (*i.e.* susceptible of a solution according to law) the way of such decision is supplied in the Permanent Court (Articles 12 and 14 and the Protocol). Any disputant can appeal for the help of the League by applying to the Secretary-General, who is bound, by the Covenant, to make arrangements for a full investigation. The Council's decision, which may be unanimous or by majority, must be published, whether accepted or not, and no member of the League may go to war with the party which accepts the League's decision (Article 15). Thus there are three methods by which disputes can be settled through the agency of the League—namely, (1) by legal verdicts when possible and useful, (2) by arbitration, (3) by the political agency of the Council or Assembly in accordance with procedure based on the principles of full publicity and strict impartiality.

The most disputed of the devices suggested for the prevention of war is contained in Article 16. It is so important as to be worth quoting in full :

"Should any member of the League resort to war in disregard of its covenants under Articles 12, 13, or 15, it shall *ipso facto* be deemed to have committed an act of war against all other members of the League which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between persons residing in their territory and persons residing in the territory of the Covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between persons residing in the territory of the Covenant-breaking State and persons residing in the territory of any other State whether a member of the League or not.

"It is for the Council to give an opinion whether or not a breach of the Covenant has taken place. In deliberations on this question in the Council, the votes of members of the League alleged to have

resorted to war and of members against whom such action was directed shall not be counted.

"The Council will notify to all members of the League the date which it recommends for the application of the economic pressure under this Article.

"Nevertheless, the Council may, in the case of particular members, postpone the coming into force of any of these measures for a specified period where it is satisfied that such a postponement will facilitate the attainment of the object of the measures referred to in the preceding paragraph, or that it is necessary in order to minimise the loss and inconvenience which will be caused to such members."

(The Text given above is as amended by the Council and Assembly in 1922.)

It is clearly hoped that this will be sufficient to prevent any Power from making war. It is now generally felt, for example, that no Power would have dared to make war in 1914 if it had been faced with the certainty of such a universal boycott as is here outlined. But supposing these foreshadowed operations are not sufficient to deter a state from venturing upon war, then whether the other Powers will stand by their obligations under this Article will be the acid test of the League's efficacy. The powers granted under this Article are undoubtedly extremely dangerous, so much so that the League appointed a commission in 1921 to inquire into the limits of the obligations of members under it. Carefully read, however, it is seen to make war certain only if a member goes direct to war without exhausting the possibilities of pacific settlement offered by the League. (50)

Besides this great purpose of peace, the League of Nations has undertaken several useful tasks—such as materially assisting in the financial restoration of certain post-War States, *e.g.* Austria—as well as many obligations under the Treaties, particularly the allotment and oversight of mandated territories, such as Colonies formerly in the hands of enemy states; responsibility for the organisation and maintenance of international régimes, such as that in the Free City of Dantzic; the collation of information connected with the international aspects of such questions as Labour and Health; and the

drawing up of rules for the suppression or regulation of such cosmopolitan evils as the White Slave Traffic, opium and drugs. The League of Nations has, in fact, become a great clearing house of ideas about truly international affairs, and in this way, if it has done nothing else, has proved an inestimable boon to Europe and the world at large. The expenditure for defraying the cost of its multifarious activities is apportioned among the various states by means of a budget drawn up by the Council and approved by the Assembly. The difficulty of satisfactorily organising economic machinery within the framework of a political constitution is demonstrated here no less than, as we saw in the last chapter, in the case of national constitutions. The difficulty has been partially overcome by the establishment of a body called the International Labour Office which is a department of the League and works in Geneva side by side with it. It has the oversight of all those delicate matters of international economics which are too controversial to be dealt with by the official organisation, and has already done very useful work.

V.—THE STRENGTH AND WEAKNESS OF THE LEAGUE'S CONSTITUTION

The great strength of the Constitution of the League, as compared with any other scheme for the maintenance of the peace of the world since the fall of the Roman Empire, is that its organs are permanently established. It is true that the Assembly meets only once a year and that the Council, apart from its quarterly meetings, is convened only when required, but the Secretariat is a fixture, and this is of vital importance, for it is the line of communication among the disjointed parts of the League's organisation. ✓The League of Nations is a body ; its soul is the will of its members to make it strong, but its nervous system is the Secretariat. Another fixture is the Court of International Justice. No such permanent International Judiciary ever existed before. As one authority writes, "Untrammelled by inconvenient precedents the judges have the grand possibility before them of creating, for

the first time in history, a proper standard of international justice."

But undoubtedly the greatest element of strength in the Constitution of the League is that it supplies a means of airing grievances, of bringing disputes into the light of day, and of securing a delay before appeal is made to the arbitrament of the sword. Any state which *wishes* to avoid war has here at least the means of showing the world that it does. Thus the negative contribution of the League to the peace of the world is very great, for it drives the determined and surly aggressor into a position in which he cannot conceal his nefarious intentions. But its strength lies, also, on the positive side. The Council, and still more the Assembly, provide a forum for open and public debate, and in this respect offer opportunities for education in international constitutionalism like those we noted, in Chapter XIV, in connection with less developed communities. And such opportunities are sorely needed; for, in relation to the problem of the effective organisation of peace, the nations of the world are indeed a backward people. In so far as the organs of the League work, they end the evil reign of secret diplomacy. The international constitution-makers who promulgated the Covenant of the League realised that peace should be regarded not as a negative state of things which continues to exist just so long as war does not occur to disturb it, but as an edifice which must be slowly and deliberately built by the nations of the world. The Constitution of the League supplies the scaffolding for that edifice. It is for the statesmanship of the post-War world to build the temple of peace within it.

So much for its strength. Its weaknesses are many. First, on any important matter, the Covenant demands the unanimity of all the Powers. Nothing positive can be done without the agreement of, say, Haiti, as well as that of Great Britain. Each state, that is to say, preserves its independent right of action, and thus the least important state, say Latvia, is safer within the League than, for example, is the State of New York within the American Union, though it remains true that, if the great nations of the world decide upon a certain action, it

matters little that the smaller nations should object to it. Secondly (and this follows from what we have just said), secession from the League is not only possible, but comparatively easy. Thirdly, the League has no money-raising power. It must therefore delegate all those powers whose exercise involves heavy expenditure, as, for example, the administration of areas placed in its keeping. Fourthly, the delegates of the Council and the Assembly are envoys of their Governments, and not elected representatives of their respective nations. What hope is there of a day coming when they will be elected, and so bring the people whose interests they should be safeguarding into direct touch with them? When we consider that it took the United States 125 years to achieve the principle of the direct election of its Senators, the hope seems rather distant.

All these weaknesses may be summed up in a phrase. The League of Nations lacks all sovereign powers. In one important respect, therefore, its Constitution is quite unlike the constitutions we have been examining. We said in our first chapter that for the maintenance of its sovereignty the state needs three indispensable pieces of machinery—viz. military power or the control of the armed forces, legislative power or the means of making laws, and financial power or the ability to extract sufficient money from the community to defray the cost of defending itself and of enforcing the laws it makes.* The League of Nations controls no armed forces, and although it can make laws, it cannot enforce them. It is not surprising, therefore, to find that, although the League has done some excellent work in keeping the peace since the War, some of the Great Powers have shown a lamentable tendency to work outside it in their larger diplomatic activities. For example, the Locarno Treaty in 1926, though "a particularised application of the Covenant principle," implied a distrust of the League's ability to achieve its purposes; and what is called the Kellogg Peace Pact of 1928, for the outlawry of war, has been conceived and executed by the Secretary of State of the United States which has consistently refused to enter the League. Yet

* See p. 7.

these treaties may in the end prove to be the means of strengthening the League, whose permanent machinery may be used to watch that their provisions are not outraged. But the truth remains that the League of Nations has not the essential qualities of a state and that its members together do not form a body politic. It may be objected that no progressive state can live except by the will of its members and, therefore, a League of Nations to enforce peace is not practical politics. Yet, as we have so frequently emphasised, coercion is of the essence of the state, and there is no swift and certain element of coercion in the Covenant of the League, like that which is implied in the Constitution of every individual state. No member of the League has sacrificed one tiny fragment of its sovereignty, and the question arises whether, until its members are forced to sacrifice some of it, a real League of Nations can be truly founded. (51)

READING

- BURNS : *Political Ideals*, Ch. xiii.
 BUTLER : *Handbook to the League of Nations*, pp. 28-80.
 GETTELL : *Readings in Political Science*, Ch. xi.
 JENES : *State and Nation*, pp. 276-288.
 LASKI : *Grammar of Politics*, Pt. II, Ch. xi.
 LEACOCK : *Elements of Political Science*, Pt. I, Ch. vi.
 POLLOCK : *The League of Nations*, Appendix i, ii, iii.
 SIDGWICK : *Elements of Politics*, Chs. xiv-xviii.
 TEMPERLEY : *The Second Year of the League*, Appendix.
Encyclopædia Britannica, Articles on "League of Nations," Vol. 31 (11th Edition, Additional Volume) and New Vol. II.

BOOKS FOR FURTHER STUDY

- BAKER : *The League of Nations at Work*.
 BROOKES : *What is Wrong with the League of Nations ?*
 DICKINSON : (1) *The Choice before Us*. (2) *The European Anarchy*.
 MUIR : *Nationalism and Internationalism*.
 MURRAY AND OTHERS : *The League and its Guarantees, etc*.
 POLLARD : *The League of Nations. An Historical Argument*.
 ZIMMERN : *Nationality and Government*.

SUBJECTS FOR ESSAYS

1. Recount the history of projects for the more harmonious working of international relations up to the outbreak of war in 1914.

2. What principles do you consider should be observed in establishing a machinery for dealing with international disputes ?

3. Explain the composition and functions of the organs of the League of Nations.

4. Compare the connection between the Assembly and the Council of the League with that between the Upper and Lower House of the Legislature of any existing state.

5. In what sense is the establishment of the Secretariat of the League a new departure ?

6. What is the importance of the Permanent Court of International Justice and what is the difficulty of constituting such a court ?

7. How far do you consider that the League of Nations, as at present constituted, is calculated to prevent appeals to the arbitrament of the sword ?

8. Examine the text of Article 16 of the Covenant of the League and discuss its adequacy to fulfil its purpose.

9. To what extent is the League of Nations likely to destroy the principle of " Secret Diplomacy " ?

10. " The League of Nations lacks all sovereign powers." Discuss this statement as a criticism of the Constitution of the League.

CHAPTER XVII

THE OUTLOOK FOR CONSTITUTIONALISM

WE have now completed our survey, and what we have said in the foregoing chapters naturally leads out to a brief discussion of the possible developments of constitutionalism in the future. For political constitutionalism must develop or die : it must keep pace with changing times and thought or fall before the onslaught of disruptive forces. This constitutionalism, as we have shown, was born in England ; it is a product of Anglo-Saxon civilisation and in its transplantation to the Continent of Europe and to various parts of the world it has undergone many changes. We have seen how it has fared through its various migrations and modifications. Since the War many have come to question the adequacy of Parliamentary Government, and examples are pointed to, in this place and that, of reactions against it. In Russia, in Italy, in Spain, in Greece, in Poland we find other methods being tried, and we are asked to draw the conclusion that Parliamentary Government has had its day, and is everywhere about to be superseded. But that conclusion may be too hastily drawn, in view of the existence of what one writer calls "the great constitutional block," consisting of Germany, France, Britain, Switzerland, Holland, Belgium, Czecho-Slovakia, and the three Scandinavian countries, to say nothing of the United States, the British Self-Governing Dominions and Japan, in all of which the spirit of constitutionalism is predominant. If, it has been pointed out, the parliamentary régime has been superseded in Italy and Spain where it existed before the War, we must remember that the real democratisation of Germany since the War is a gain which more than compensates for these apostasies. (52)

Moreover, this widespread constitutionalism is no ancient and effete method of government. It is, on the contrary, comparatively new. Even in Britain, the democratisation of the ancient Constitution is a development that has occurred within the space of little more than the last half century. It may therefore be regarded as being on its trial everywhere, but it is not unjust to conclude that it is standing that trial very well, and that it has shown a capacity for adaptation to changing times and circumstances which should give us hope for its ability to overcome the weaknesses from which it undoubtedly suffers and to meet the demands that are bound in the future to be made upon it. Among the most obvious weaknesses of modern parliamentarianism is, as we have already indicated, the fact that the central machine has already more work than it can properly cope with. At the same time, as we have earlier suggested, the new demands made upon it are chiefly economic, since a vast extension of the economic activities of the state is envisaged in the programme of most social reformers. Together with these two points must be considered the fact that the formula of political democracy—namely, that each citizen shall count as one and no more than one—largely fails in the average state to satisfy the mass of the workers in whose interest such a method is presumed to have been devised.

This last point complicates the other two ; for while, in the economic interests of the less prosperous part of the community, the central organs of the state must be further loaded with duties, of which they have already more than they can adequately discharge, in a parliament convened under the present system of voting the industrial workers cannot get a majority, and in desperation may easily be led to resort to wild, unconstitutional courses. And the constitutional state is bound to face this difficulty ; for if the industrial workers do not form a majority, they at least constitute a sufficiently forceful minority to cause schism in the state and to paralyse the community if something is not done to meet their demands. Let us see what constitutionalism can do by way of attempting a solution of this complicated problem.

The crucial fact at the back of any such discussion is the

sovereignty of the state. Any political society is bound to reserve sovereign powers to itself if it is to be preserved from anarchy ; for a community which permitted every individual belonging to it to do exactly as he liked (which is the argument of Anarchists) would not be a society but a chaos. At the same time, it must be remembered that men and women are subjects of a state not for its good, but for their own. The state must satisfy the mass of the community whose best interests it is intended to safeguard (it can have no other purpose), and the machinery through which the state functions—that is, its constitution—must be so adjusted as to secure this end. For this reason modern constitutionalism has evolved on the basis of the assumption that sovereignty belongs to the people. This also is the argument of most revolutionists. Indeed, they are revolutionists precisely because they believe that it is impossible for modern state machinery to give effect to the sovereignty of the people. The Fascist doctrine, on the other hand, according to a recent speech of Signor Mussolini, “denies the dogma of popular sovereignty which is disproved by the realities of life. We proclaim, on the other hand,” he added, “simply the dogma of the sovereignty of the state, which is the juridical organisation of the nation and the expression of its historic needs.” The new Italian Corporative State, founded as it is upon such a view, would therefore seem to be outside the stream of constitutional progress whose outlook we are examining.

In order that the sovereign state may prove acceptable to the mass of citizens in an educated community, it must satisfy them that they ultimately control their political destiny. Sovereignty must be so handled and poised that individual rights are not unwarrantably injured by it. And to secure this enjoyment of rights the organs of the state must be arranged in such a manner as to ensure that the mass of the community shall not only comprehend them, but take a lively interest in their constitution and development. In order to achieve this the constitutional state may have to go very much farther than it has already gone, or perhaps undo much that it has already done. Such reforms as a new type of representation in a

remodelled Second Chamber, and an extension of direct democratic checks, like the Referendum, the Popular Initiative and the Recall, would doubtless go far in some cases to secure this living interest, but they hardly touch the threefold problem at which we have hinted earlier, namely, the overcrowding of the legislature, the difficulty of satisfying the economic demands of certain sections of the community, and the inadequacy for the latter purpose of the principle of "one man one vote." Let us consider what else the constitutional state can do in view of this thorny problem of sovereignty.

In the first place, there seems to be no good reason for supposing that sovereignty must necessarily retain the particular form it now possesses in any given state. Let us admit that sovereignty, in an ultimately legal sense, is indivisible. But that is not to deny that it is malleable. As we have shown, in states with flexible constitutions, the legislature is sovereign, and in states with rigid constitutions the constitutional document is sovereign. But there is nothing to prevent a flexible constitution being made rigid by means of the enactment of a constitutional law saying that certain questions shall henceforth not be dealt with by the legislature through its normal procedure. Nor is there any reason why a rigid constitution should not become flexible by the removal of the existing restrictions upon parliamentary action in certain departments. For example, Britain has a flexible constitution. If the unrestricted action of Parliament were thought to have become an engine of tyranny, then its effectual sovereignty could be limited. Again, France has a rigid constitution, but if it came to be felt that individual rights were unnecessarily injured by the restrictions at present placed upon the normal action of the Chambers, those restrictions could be constitutionally removed, and the sovereign power placed in the keeping of the French Parliament.

But these are examples of unitary states. We have shown that the sovereignty in a federal state necessarily lies in the constitutional document, or, in other words, that the constitution of a federal state must be rigid. The constitution in a federal state, therefore, could become flexible only by changing

the federal state into a unitary one. If Congress in the United States, for example, should become the repository of the sovereign power (and if the Constitution became flexible, such would necessarily be the case), state rights would no longer be safeguarded as they are now, and that lack would involve the virtual destruction of the basis upon which the federal structure is built and, consequently, the virtual establishment of a unitary state. But there is no inherent reason why this should not be done. If the states belonging to the Union could have originally planned a unitary instead of a federal state (and they certainly could legally have done so) there is no reason why they should not, if they wished, now transform the one into the other.

The very existence of the federal plan, in fact, proves that for practical purposes it is possible to divide sovereignty, so long as there is some ultimate security against the issue of anarchy from the conflict of the co-ordinate holders of it. This practicability of a virtual division of sovereignty suggests a possible line of reform in certain unitary states. If the total area is so large that the only law-making body is distant from the constituents, or if the business of legislating for a thickly populated area leads to the overcrowding of the work of the legislature, it is certain that the constituents will lose interest in the proceedings of their representatives, the legislature will lose touch with those it represents, the representative system will tend to become unreal and discredited, and the way will be open for the trial of other methods of an unconstitutional kind. This is the danger in a heavily-populated area like that of Great Britain. This is, as we have shown, a unitary state. With the advance of social legislation—an inevitable concomitant of democratic progress—the pressure upon the central legislature has become so great that the only business which has a proper chance of being dealt with is that initiated by the Government. What, then, it may be asked, is the use of electing a great number of representatives and paying them a salary from the public funds if their sole real business is to support or reject Government measures?

The way of possible reform here is suggested by the device

of federalism. The best examples of federal states have grown out of a number of communities formerly isolated. But there is no reason why a unitary state should not split itself up into a number of smaller bodies politic retaining for its central purposes only those powers fully necessary to the maintenance of the common good. This plan is called Devolution. It was suggested in this country at one time as a way out of the difficulties arising from the Irish Question, with the slogan, "Home Rule all Round." The plan suggested then was that England, Wales, Scotland and Ireland should become partially self-governing units, while Parliament should continue to sit at Westminster dealing with matters of interest common to them all. The division having been achieved under such a scheme (not necessarily the particular division above-mentioned), a constitution could be drawn up after the manner of federal constitutions, whereby either certain powers would be granted to the units and the remainder left to the Central Parliament, or the rights of the central authority could be definitely enumerated and the "reserve of powers" be left with the smaller units.

This, then, would be to create a federal state out of a unitary one, the first step in the process being devolution. The effect of such a reform would be, first, to lighten the almost unbearable burden which at present rests upon such a central legislature as that which now exists in Great Britain; secondly, to lessen the danger of bureaucracy by making it possible to keep a closer watch upon the action of the executive; and thirdly—and this is the most important consideration of all—to enliven politics, to open avenues of local legislation not possible now, and to keep up a real and constant contact between the elector and the representative. Such units of self-government, it must be understood, would be by no means mere local-governing bodies, but quasi-sovereign bodies, sharing the sovereignty with the central parliament. This scheme would, of course, involve a rigid constitution—the true sovereign in this case—whose amendment could be carried only by some special machinery and whose sanctity would be ultimately safeguarded by some authority such as a supreme judicature.

If it is possible practically to divide political sovereignty in this territorial fashion, the question next arises whether it would not be feasible to share it among authorities political and economic. We have discussed what has so far actually been done in the matter of economic representation in constitutional states, in Chapter XV, and there indicated the difficulty created by the question of this sort of divided sovereignty. The difficulty undoubtedly exists, but we must remember that we are discussing how political constitutionalism may preserve itself against unconstitutional schemes. To do so, it may be forced, at some future time, to try all sorts of experiments which at present seem to lie outside its province or area of action. And the question may have to be seriously debated whether it is possible for the state to be federal in something more than a territorial sense. For the state, after all, is but society politically organised, and society may yet make demands upon political machinery which in its present form it cannot bear. In such a case the machinery must either be remodelled to meet the new demands or be scrapped altogether, in which latter case constitutionalism will be at an end and will yield to the forces that frankly challenge its efficiency, whether Bolshevik or Fascist; for enlightened society will not endure a political machinery which uses the power to coerce in a direction inimical to society itself and against its own preservation and advancement.

Such a federal scheme as that of which we have spoken would regard society, not as a federation of territorial units—provinces or states or cantons—but as a federation of all kinds of associations, economic, religious, and social, in which men and women do in practice express themselves far more fully than they do through the normal political organisation. We have seen how advisory economic councils have been established in Germany and the Irish Free State, and how economic and other special interests may be made to play a part in the action of the political machine by means of a reformed Second Chamber which might represent this side of a nation's activities. But the federal idea, when it gets beyond mere territorial limits, has a much wider scope than this. It implies the establishment

of semi-sovereign bodies with definite rights within the sphere of their action, corresponding to such rights at present enjoyed by the federating units in such federations as the United States and Australia, the difference being that they would have, not political, but economic or religious or social functions. (53)

The state, of course, would remain, as it is bound to remain, to co-ordinate these new parts and maintain order among them. But in this case the state becomes an association of associations, in each of which there is a sense of rights and interests which every citizen can appreciate. Whether the Italian Corporative State achieves this sense of rights is open to question. It may, at any moment, satisfy the mass of Italian citizens in the particular circumstances in which Italy finds herself to-day, but it is doubtful whether such a scheme would be tolerated elsewhere, and in any case it does not meet the difficulty of a distinct economic representative system with its own sphere of powers. Still, it has struck at one of the root weaknesses of modern democracy and to that extent is worthy of the profoundest study by all serious students of modern comparative politics. At least post-War Italy has dared to experiment, and has taught us that if, by holding to the old fixed mould of constitutionalism, the consciousness of true allegiance is lost, there is nothing for constitutionalism to do but remould its organs in such a way as to ensure that the allegiance of the intelligent individual will be vitally felt within the association in which his interests are most alive. Sovereignty then begins to assume a new guise: it becomes, instead of a fixed legal idea, a pliant tool for man's welfare. And once this is felt of it, there is hardly any limit to the vista of constitutional development, whether national or international.

We thus come finally to the outlook for international government. Every constitution which we have examined in the body of this book is the constitution of a nation-state, either unitary or federal, except the Constitution of the League of Nations which, as we saw, is quite different from national constitutions in that its machinery contains no element of sovereign power. But much that we have said concerning the possibility of manipulating sovereignty within existing political

units applies with equal, or even greater, force to international organisation. Indeed, international organisation is the indispensable condition of the continued security of political constitutionalism. It is perhaps an unwarrantable assumption that the nation-state, in its present form, is the final unit of social organisation in its political aspects. Its power as a sovereign body, as so far developed, may possibly turn out to be nothing more than a phase in historical experience. We do not have to look far to realise that the march of new forces has brought about an interdependence among the states of the world such as to render external state sovereignty very largely obsolete. To become a real political force the League of Nations must be given a true law-making power, and in order that it shall be given this power, some elements of existing state sovereignty must be surrendered to it.

The principle of federation must here again be envisaged as the saviour of the situation. Nation-state sovereignty is, at best, an illusive weapon. There is a wide area of political experience and happiness to be enjoyed without it, as may be seen, for example, by observing the multifarious political activities of any state within the federation of the United States. What the state wants is not sovereignty, which, externally considered, is the right to behave as it likes towards its neighbours, so much as autonomy, which is the right rather to control its own purely local affairs. The control of armaments and the right to make war may one day be taken out of its hands, as surely as such rights are now outside the area of legitimate action on the part of an individual within an existing state. Just as national constitutionalism must mould itself to meet new needs or give way to the forces of anarchy, so must international constitutionalism develop or show itself helpless before the international anarchy which was the background of one World-War and may, if it persists, produce another which must be worse than the last, until a war at length arrives to threaten the complete destruction of the civilisation which the Western World has so laboriously built up.

But just as the welfare of the individual is the proper starting-point for the development of national constitutionalism,

so must the nation continue to be the point of departure for any scheme of future international organisation. The disruptive forces which wish to overthrow Western constitutionalism are equally those that look to a world-fraternity which would completely overstep national boundaries, utterly ignoring the existence of nations. What is called the "Third," or Moscow, "International," which emanates from Bolshevik Russia, is a revival of the "International Association," founded by Karl Marx in 1864, and superseded in 1889 by the Second "International" which was nothing more than a gathering of socialist groups from the various nation-states to discuss common action from the basis of their national programmes. To combat the immediate evils that would assuredly follow the triumph of the principles of the Moscow "International," the organisation of an international scheme on constitutional lines must be prepared, sooner or later, to go farther than it has already gone under the scheme adumbrated in the Covenant of the League of Nations. If federalism is to be the line of future development in this department of politics, the central machine must at length be given sovereign powers; that is to say, it must make laws and have the power to enforce them, and it must have the right to levy whatever financial aid is necessary in order to discharge this duty. In such an event we should have an international organisation acting through the machinery of a supernational authority. (54)

In conclusion, then, it is safe to say that the constitutional state, if it is to endure and if it is to achieve its double mission of ordered progress internally and constructive peace externally, must continue to be based upon the twin foundations of democracy and nationalism. These two phenomena, in modern times, have shown themselves to be developments so irresistible that they will not admit of an explanation which would regard them as fortuitous or ephemeral. Those who attempt to argue them away as something accidental, fly in the face of the facts of history. More than one monarch, whose life was largely spent in treating the claims of democracy with cynical indifference, has hastened, in the hour of his defeat, to seek his own preservation by making concessions to it. So it

was with Napoleon I and with Wilhelm II. Nor can nationalism be regarded as other than inherent in modern political organisation, in view of such facts as the recoil of Central Europe upon Napoleon, the complete breakdown of the International movement founded by Karl Marx, and the miraculous survival of the national spirit in countries like Bohemia and Poland through centuries of oppression, partition, and even dispersion. (55)

Those, then, who, in setting out upon political revolutions or reactions, flout these two principles, court a disaster which it is the business of national democratic constitutionalism to prevent. But if it is to be prevented, the champions of constitutionalism must remember two other things about it which are equally proved by its history and existing forms, namely, that it has shown a marked capacity for adaptation and yet that the spirit which informs all its variations is one, and that the likenesses among existing constitutional states are sufficiently marked to permit of the use of machinery among them for purposes which are common to them all. If, in fine, constitutionalism is to be preserved, constitutionalists must be ready to admit that democracy can take many shapes, and that it may be necessary to experiment greatly in order to discover the ideal form of it: that nationalism has both good and bad aspects, and that it may become possible to sacrifice some of its badness in order to achieve the inestimable boon of international peace without in the least diminishing its power to benefit mankind through the instrumentality of a limited nation-state.

READING

BRYCE : *Modern Democracies*, Vol. II, Chs. lxxvii-lxxx.

DICEY : *Law of Constitution*, pp. lxxv-xci.

LASKI : *Grammar of Politics*, pp. 309-311.

LOWELL : *Government of England*, Vol. II, Pt. viii, and Chs. lxiii-lxvii.

MACIVER : *Modern State*, Chs. xv-xvi.

MARRIOTT : *Mechanism of Modern State*, Vol. II, Ch. xxxviii.

MURRAY : *Political Science*, Ch. xii.

SIDGWICK : *Elements of Politics*, Ch. xxxi.

Contemporary Review for February and March, 1928. Two Articles by H. A. L. Fisher on "The Adequacy of Parliaments."

BOOKS FOR FURTHER STUDY

- DICKINSON : *Modern Symposium*.
GREEN : *Principles of Political Obligation*.
MONTAGUE : *Limits of Individual Liberty*.
RUSSELL : *Principles of Social Reconstruction*.
STEINER : *The Threefold State*.

SUBJECTS FOR ESSAYS

1. Discuss the statement that sovereignty is indivisible.
2. Examine the device called Devolution as a means of reforming the Constitution of the United Kingdom.
3. How might the modern constitutional state be federalised to its economic advantage ?
4. Do you consider that nationalism must necessarily be the basis of any true scheme of world political organisation ?
5. Discuss the federal plan as a means of establishing a world-state consistently with national rights.
6. Examine modern democratic development as an illustration of Aristotle's dictum that " man is by nature a political animal."
7. " Liberty and equality are mutually exclusive." Discuss the bearing of this aphorism upon the future of the constitutional state.
8. " Man is born free ; yet he is everywhere in chains," said Rousseau. If this is true, what can national democratic constitutionalism do to make the chains bearable ?
9. " Every creation of a new scheme of government is a precious addition to the political resources of mankind." Discuss this as a motto for political constitutionalists.
10. Discuss the doctrine of Anarchism as a " road to freedom," and compare its prospects with those of the constitutional state.

NOTES FOR NEW EDITION

(Revising Original Text)

NOTE 1 (p. 11, footnote)

Constitutionalism in Spain

The reversion to constitutional government did, in fact, take place in 1931, when the new Constitution, some account of which is given in the Introduction (pp. xlvī-xlvii), was promulgated; but in 1939, the Nationalist Leader, General Franco, finally crushed the Republicans who had championed the Constitution, and the constitutional future of Spain was then in great doubt.

NOTE 2 (p. 70)

The Executive in Germany, Turkey, and Italy

The statements in this paragraph concerning Germany, the Turkish Republic, and Italy require, in the light of more recent events, some modification.

(a) "But this is past in Germany; there the executive is now a parliamentary one."

This was true of the government of the German Republic under the Weimar Constitution (1919), described in these pages, but it has, of course, ceased to be true since the advent of Hitler to power in 1933. The Executive under the Dictatorship has become very obviously non-parliamentary and, since the death of President Hindenburg in 1934, when Hitler abolished the elective Presidency and merged it with his posts of Chancellor and *Führer*, more and more fixed. Details of the constitutional position in Germany in 1939 are given in the Introduction (pp. xxxiv ff.).

(b) The Turkish Republic was the creation of Kemal Atatürk. The four-fold Presidency referred to was perhaps outside the constitutional range, though Atatürk's Government was rather in the nature of an enlightened despotism than of a Dictatorship, as we know it in the Western Totalitarian States. Atatürk's death on November 10, 1938, left the political future of Turkey in some doubt, since the tranquillity and progress of the state had depended so much upon his personality and force. The policy of his successor, General İsmet İnönü, is not likely to be different, though it is questionable whether he is of Atatürk's type. (See text, pp. 252-254.)

For a brief but illuminating account of Atatürk's life and work, see the Obituary Notice in *The Times*, of November 11, 1938. See also *The New Turkey*, published by *The Times*, 1939.

(c) In the case of Italy, the tendency noted, to transform a Parliamentary into a non-Parliamentary Executive, has since become something more than a tendency, in fact a fixed principle. The State Commission appointed by the Grand Council of Fascism in 1924 to examine and report on constitutional problems, stated in its Report that "the executive is in no sense to be regarded as an emanation of Parliament," and everything that has happened since in Italy has more and more applied this truth in practice. The Statute of 1848 says, in Article 5, "The Executive power belongs to the King alone." This, in pre-Fascist days, was interpreted to mean responsibility to Parliament, but Mussolini has found it convenient to interpret it literally and in doing so to pretend that he is acting in strict accordance with the Constitution. The Ministers, in fact, form a Council, not a Cabinet in the British sense. Mussolini himself simultaneously holds the portfolios of Foreign Affairs, War, Marine, Air, and Corporations, and the remaining Ministers are responsible to him and not to Parliament, which no longer exists as a responsible body. For example, in January, 1935, all the Ministers except two resigned, but the Italian Chambers played no part in these changes. (See Finer : *Mussolini's Italy*, pp. 249 ff.)

NOTE 3 (p. 74)

Italy : Summary of Attributes of Constitution

As to Italy, this example is now perhaps a little misleading, since the phraseology of constitutionalism is even less applicable to the Italian State now than it was when this book was written. For example, the phrase "a legislature elected on manhood suffrage, with multi-member constituencies" is hardly a fair description of the peculiar plebiscitary system which has now become the definite electoral method of the Fascist, or, if you will, Corporative State, in Italy. And again, "a parliamentary executive (albeit tending to become non-parliamentary or fixed)" was true in 1930, but, as explained above, and as shown in the Introduction (pp. xli ff.), is a very inadequate way of describing the definitely non-parliamentary character which the executive in Italy has now assumed.

If, to be quite safe, we substitute France for Italy as the example given, the text would read thus : France conforms to the first type on the first ground ; to the second type on the second ground ; to the first type on the third ground (i, *a* and *b*, and ii) ; to the first type on the fourth ground ; and to the second type on the fifth ground. In short, France is a unitary state with a rigid constitution, a legislature elected on manhood suffrage, with single-member constituencies, and an elective Second Chamber, a parliamentary executive, and a special administrative law to protect the servants of the state.

NOTE 4 (p. 87)

The Constitution of the United Kingdom and the Constitutions of Self-Governing Dominions

This section, headed "Historical Unitarianism of the United Kingdom," requires revision in the light of the Statute of Westminster, 1931, described in the Introduction (pp. xxiii ff.). First, it is now quite a "bootless inquisition" to ask whether the Self-Governing Dominions are completely independent or not (p. 83), for their complete independence is now stated in a Statute. Secondly, it is no longer true to say that the grant of self-government to the Dominions "can (in strict legality) be equally withdrawn" by the British Parliament (p. 86). As a result of the Statute of Westminster, this cannot happen even "in strict legality." Thirdly, the Dominions not only in practice reserve "the right to decide on future diplomatic action" (p. 87), for this right now has statutory force (Clause 3 of the Statute of Westminster). Fourthly, the references to the Constitution of the Irish Free State, 1922 (pp. 85 and 86), are now obsolete, since the establishment of the new Constitution of Eire in 1937. (See *Constitutions of All Countries: Vol. 1: The British Empire, The Governments of the British Empire, and The Dominions as Sovereign States*, as cited in footnotes in Introduction.)

NOTE 5 (p. 87)

Newfoundland: Suspension of Constitution

A note on Newfoundland is required here in view of what has happened since 1930 to this, the oldest British Colony. The Constitution of Newfoundland has been in suspense since 1933, when, through financial difficulties, the Dominion asked the British Government for assistance. As a result, Responsible Government was temporarily suspended and the administration of affairs vested in a form of Commission until such time as the Island should again become self-supporting. The Act, dated December 21, 1933, came into force in 1934. The full text of this Act and the consequent Letters Patent of 1934, and of the Royal Instructions of the same year, are given in *Constitutions of all Countries, Vol. 1: British Empire*, pp. 231 ff. See also Keith: *The Dominions as Sovereign States*, pp. 93-99.

NOTE 6 (p. 90)

Irish Free State and Eire

The question whether a united Ireland would be a unitary or federal state has, at any rate so far as Eire is concerned, been decided by the new Constitution. That Constitution, as explained in the Introduction (p. xxv), is so worded as to apply to the whole of Ireland,

though " pending the reintegration of the national territory," it applies only to the area of the former Irish Free State.

NOTE 7 (p. 91)

Southern Rhodesia, Northern Rhodesia, and Nyasaland

Nothing further has happened in the direction of possible fusion with the Union of South Africa. On the contrary, there has been a movement towards the amalgamation of Southern and Northern Rhodesia, including Nyasaland. In 1934 the Legislative Assembly of Southern Rhodesia requested the Imperial Government to grant full responsible government, but there was some fear that the rights of the natives might not, at so early a stage of self-government for Rhodesia, be fully safeguarded. The Royal Instructions of 1923 and 1926 were amended in 1937, but the Constitution was thus revised only slightly in the direction of full self-government, the main change being the elimination of the High Commissioner of South Africa as the intermediary between Southern Rhodesia and the Imperial Government, and the establishment of direct communication between the Governor and the Secretary of State. (For text of amended Instructions, see *Constitutions of All Countries, Vol. I* : pp. 365-367). Meanwhile, in 1936 a convention of representatives of Southern and Northern Rhodesia passed a resolution that the early amalgamation of the two Rhodesias " under a constitution conferring the right of complete self-government, was in the best interests of all the inhabitants of both Colonies." In 1937, the British Government appointed a Royal Commission under the Chairmanship of Lord Bledisloe, a former Governor-General of New Zealand, to visit the territories concerned, with these terms of reference : " To inquire and report whether any, and if so what, form of closer co-operation or association between Southern Rhodesia, Northern Rhodesia, and Nyasaland is desirable and feasible, with due regard to the interests of all the inhabitants, irrespective of race, of the territories concerned and to the special responsibility of H.M. Government in the United Kingdom for the interests of the native inhabitants." (See *Annual Register* for 1937, pp. 132-133.) In 1938 this Commission visited the territories over a period of four months and took evidence from all the interests and communities concerned. The Report of the Royal Commission was published in 1939. The Commissioners came to the unanimous conclusion that closer co-operation between the territories is desirable. They did not regard a federal system as practicable but expressed the view that " the Home Government should take an early opportunity of accepting the principle that identity of interests will lead sooner or later to political unity." But a good deal of development would have to take place before this could be brought about. Meanwhile, the Commissioners suggested, the

two non-self-governing Colonies—Northern Rhodesia and Nyasaland—should be incorporated into a single unit. (For a full account see *Blue Book*—Cmd. 5949—1939. A summary of the Report appeared in *The Times*, March 22, 1939.)

NOTE 8 (p. 113)

Australian Federalism

As explained in the Introduction (p. xxvii), in 1938 and 1939 powerful movements were on foot to bring about a greater political unitarianism in the Australian Commonwealth. The following eight glaring examples of deficiencies in the proper powers of the Commonwealth Government were given by the Government spokesman on the occasion referred to in the Introduction :

1. Division of powers in trade and commerce.
2. Limitation of public health powers to quarantine.
3. Inability to control the conduct of trading companies.
4. Limitation of power to deal with industrial disputes by arbitration. (Only inter-State disputes can be dealt with by the Commonwealth Government.)
5. Lack of control of aviation except through State Governments.
6. Lack of jurisdiction over fisheries.
7. Lack of jurisdiction over Agriculture (essentially a unitary problem).

8. Lack of jurisdiction to deal with unemployment, while charged with responsibility for unemployment benefit.

(See *The Times*, November 23, 1936.)

NOTE 9 (p. 116)

Canada and Judicial Committee of Privy Council

Though, as is stated, frequent appeals have been made to the Judicial Committee in the past, it is not conceivable now that, in a case of conflict between the Federal and Provincial Authorities, an appeal would ever be made to that body.

NOTE 10 (p. 120)

Germany : Destruction of Federalism

The details given here on federalism in Germany are, of course, no longer true. As explained in the Introduction (p. xxxviii) all the federal elements of the German State, which lay deep in the roots of its political organisation, and were maintained, and in some respects even strengthened, in the Weimar Constitution of 1919, have been completely swept away by the totalitarianism of the Nazi régime. Although in his first speech to the Reichsrat as Chancellor, Hitler referred to the States as "the historical corner-stones of the Germanic

Empire," nevertheless the complete unification of the state and the consequent abolition of provincial rights have proved to be an inevitable concomitant of the Nazi dictatorship. (See Roberts: *The House that Hitler Built*, pp. 67 ff.)

NOTE 11 (p. 139)

New Zealand: Imperial Veto

It is now, of course, more than an "accepted opinion" that the Commonwealth is a group of free states: it is a statutory fact, since the passing of the Statute of Westminster in 1931. The statement that, in practice, the veto of the Imperial Government is not now effective in connection with constitutional changes in Self-Governing Dominions is misleading, for it is true, not merely *de facto* but *de jure*, that no such veto exists. And, therefore, it is no longer possible to speak of the ultimate rigidity of these Dominion Constitutions in this sense. New Zealand is one of the Dominions named in the Statute of Westminster, and therefore we can deal with the flexibility of its constitution without even the theoretical reservation mentioned in the text. (See Keith: *The Dominions as Sovereign States*, *passim*, but especially Chapter III.)

NOTE 12 (p. 143)

Flexibility of Italian Constitution

It does not now appear, as it did when this book was written, that Mussolini is anxious to maintain the pretence of respecting the Constitution. The developments towards the complete creation of the Corporative State, as described in the Introduction (pp. xli ff.), brought about in 1939 the supersession of the Chamber of Deputies by the new Chamber of Fascios and Corporations. Nevertheless, the Italian Constitution remains a flexible one, or perhaps we should rather say that the fact that it remains unrepealed, in the face of so many radical changes, is continued proof of its flexibility.

NOTE 13 (p. 152)

Rigidity of German Constitution

The rigidity described in the text is, of course, that of the Weimar Constitution of 1919. As explained in the Introduction, the Nazi Revolution has paid no respect to the Constitution, and in the case of such a vast and far-reaching upheaval it matters little whether the Constitution that is overthrown is flexible or rigid. There do remain, however, two fundamental differences in this respect between the Fascist Revolution in Italy and the Nazi Revolution in Germany. First, in Italy the Constitution was, in fact, flexible, and therefore, while the appearances of constitutionalism were maintained it was

possible to argue that there was no constitutional outrage. In Germany, on the other hand, the Constitution was, in fact, rigid, and there could therefore be no pretence of constitutional observance when radical changes were made outside the machinery for amendment as laid down in the Constitution. Secondly, in Italy the Monarchy remains as established by the Statute of 1848 and enlarged up to 1871; while in Germany, the elective Presidency introduced in 1919 has been destroyed by the imposition of Hitler's Führership on the nation as a whole and the incorporation of the Presidency in the Chancellorship held by the *Führer*.

As to constitutional amendment by referendum in Germany, all that remains of that principle is Hitler's practice of seeking popular *ex post facto* approval of his acts by means of the plebiscite.

NOTE 14 (p. 155)

Ireland : Constitutional Amendment

The procedure of amendment described in the text is, of course, that laid down in the Constitution of the Irish Free State of 1922. But in fact the new Constitution of Eire (1937) sets up almost the same machinery for its amendment as for the earlier Constitution. Article 46 (2) of the new Constitution states: "Every proposal for an amendment of this Constitution shall be initiated in *Dail Eireann* as a bill, and shall, upon having been passed or deemed to have been passed by both Houses of the *Oireachtas* (Parliament), be submitted by referendum to the decision of the people in accordance with the law for the time being in force relating to the referendum." And Article 47 (1) states that every proposal so submitted to the people shall be held to have been approved by the people if the majority of the votes cast at the referendum are given in favour of the proposal. (See *Constitutions of all Countries*, Vol. 1, pp. 218-219; and Keith: *The Dominions as Sovereign States*, p. 183.)

NOTE 15 (p. 158)

U.S.A. : Constitutional Amendments

As stated in the Introduction, there were two amendments in 1933, the Twentieth and Twenty-first. The first of these advanced the date of the inauguration of the President and Vice-President from March to January and the coming into existence of a new Congress to January of the year of election. The second was, perhaps, more important, since it repealed the Eighteenth Amendment establishing Prohibition. As soon as the 36th State had agreed, the necessary vote of three-fourths of the States was achieved, and the law reverted to its pre-1919 situation, leaving each State free once more to decide whether it should be "dry" or "wet." (See *Annual Register* for 1933, p. 298.)

NOTE 16 (p. 167)

Manhood and Female Suffrage : Changes since 1930

There have been few changes since this was written. France, Belgium, Switzerland, Italy, Bulgaria, and Greece are still without female suffrage. So also is Jugo-Slavia, in spite of a new Constitution promulgated in 1931. Spain introduced women's suffrage by the Constitution of 1931, but that Constitution is, of course, no longer operative there.

In Portugal, as explained in the Introduction (p. xlv), an entirely new system of indirect voting was introduced by the Constitution of 1932. In 1934 female suffrage was introduced in Turkey, and seventeen women were elected to the Grand National Assembly (*Kamutay*) in the following year.

An important change has taken place in South Africa. In 1930 an Act was passed by the South African Parliament granting the right to vote to all women of 21 years and over—*i.e.* on the same conditions as men. This was a signal triumph for the women of South Africa, since on no fewer than eighteen previous occasions had similar bills been before Parliament and failed to pass. (See *Annual Register* for 1930, p. 132.)

NOTE 17 (p. 171)

Amendments in U.S.A.

The Nineteenth Amendment is no longer the latest, as stated. The latest is the second of 1933, *i.e.* the Twenty-first Amendment. (See Note 15, p. 361 above.)

NOTE 18 (p. 172)

Voting in Germany

There is still universal adult suffrage in Germany, but there is, of course, no voting for the President, the Presidency having been abolished with its incorporation in the Chancellorship, and the elections to the Reichstag are restricted to a mere acquiescence in the Government list of candidates. For example, in the Reichstag elections held in March, 1936, "only one list of candidates was presented to the voters, that of the National-Socialists, and no propaganda for any opposition was allowed," with the result that 90 per cent. of the German electorate voted for the Government list. (See *Annual Register* for 1936, p. 189.)

NOTE 19 (p. 175)

Electoral Methods in Britain and U.S.A.

Nothing further has been done in the matter of Proportional Representation in either Britain or the U.S.A., since this book was

written, and it can hardly any longer be said that it is regarded as an urgent question by any considerable body of opinion in either country. But more recent elections than those referred to in the text show the same anomalous results. For example, in the General Election of 1935 in the United Kingdom, the Government's supporters polled 11,570,179 votes against a total opposition vote of 9,930,460, and yet the number of seats secured by the Government was 428, while those secured by the Opposition numbered only 184. In other words, though the Opposition polled over 80 per cent. of the number of votes polled by the Government, they secured only 30 per cent. of the seats. The result of the election was that the Government had one member for every 27,000 votes cast for them, the Labour Party one for every 53,000 votes, while the Liberal Party had only one member for every 85,000 votes. (See *Annual Register* for 1935, p. 92.)

In the elections of 1938 in the United States for the Seventy-Eighth Congress the Democrats secured 262 seats and the Republicans 170 seats in a House of Representatives with a total of 435 seats. Thus over the whole Union the Republicans secured only 39 per cent. of the seats. Yet in 24 (mostly Northern) of the 48 States they scored 51 per cent. of the total votes cast. (See *The World Almanack* [New York] for 1939.)

NOTE 20 (p. 182)

Germany and Proportional Representation

It cannot be said any longer that P.R., or anything else, has saved Germany from the effects of violent oscillations of opinion, or that the ship of state has, in fact, maintained an even keel (p. 182). The truth is, the new Republic was not given time "to find its sea-legs" before the onset of the Nazi Revolution, which certainly is not concerned with such (to the Nazis) soft democratic palliatives as P.R.

NOTE 21 (p. 185)

Authoritarianism and the Representative System

It is now a very mild statement of the truth to say that a "certain scepticism concerning the adequacy of the representative system" has manifested itself in Germany. Things have now reached such a pass in the violent opposition of Democracy and Authoritarianism that Democrats during the next few years will be driven to buckle on rather heavier armour than that provided by such devices as P.R. if they are to defend and strengthen the citadel of democracy. (The latest book on the subject of P.R. in various countries is *The Case for Electoral Reform: With an Examination of the Principal Objections*, by S. R. Daniels. See Bibliography, p. lvi.)

NOTE 22 (p. 190)

Portugal : Second Chamber

The reference to Portugal in this paragraph is now obsolete. Portugal, as explained in the Introduction (p. xlv), has now a unicameral system under the new Constitution of 1932. The Corporative Chamber, under this Constitution, is not an Upper House, but a consultative assembly.

NOTE 23 (p. 191, footnote)

Lord Hugh Cecil

Lord Hugh Cecil is no longer a Member of Parliament. He resigned his seat for the University of Oxford in 1937, after his appointment as Provost of Eton in 1936.

NOTE 24 (p. 195)

Reform of the House of Lords

It cannot be said that the Reform of the House of Lords is any longer an urgent question. No progress has been made—indeed, no serious discussion has taken place—in this connection since this book was published, and it can only be supposed that the question is shelved *sine die*.

NOTE 25 (p. 196)

Senate in Italy

The Senate in Italy has continued since 1930 in the way indicated in the text. It has thus been easy to swamp it with Fascists and its consequent impotence has made it unnecessary for Mussolini to disturb its constitutional existence. (See Introduction, p. xlv.)

NOTE 26 (p. 200)

Senate in Spain

The reference here is, of course, to the original Constitution of 1876. According to the Constitution of 1932 the Legislature, or Cortes, was a single-Chamber Congress. (See *Annual Register* for 1931 as cited in Introduction, p. xlvii.)

NOTE 27 (p. 204)

Australian Senate

Under a unitary Constitution, if ever that came, the Australian Senate might, of course, be very differently constituted, since the case for equal representation of the States would thereby have disappeared.

NOTE 28 (p. 207)

Senate in Ireland

The arrangements outlined here are those laid down in the Constitution of the Irish Free State (1922) and now superseded by the Constitution of Eire (1937), though the latter is not very different in this respect from the former. Under Article 18 of the new Constitution, the Senate (*Seanad Éireann*) is still composed of sixty members. Of these sixty members eleven are nominated (by the Prime Minister) and forty-nine elected. Any citizen who is eligible for election to the House of Representatives (*Dáil Éireann*) is eligible for election to the Senate, *i.e.* any man or woman of 21 years. Of the forty-nine elected members, six are elected by the two Universities and the remaining forty-three from panels of candidates constituted under certain rules. Before each election five panels are formed from the names of those eminent in culture, literature, art, and education; agriculture and allied interests; labour, industry and commerce, including banking, architecture, and engineering; public administration and social services. Not more than eleven and not less than five members shall be elected from one panel. A general election for the Senate must take place not later than 90 days after a dissolution of the Dáil, and every member, unless he previously dies, resigns, or becomes disqualified, shall hold office until the day before polling day of the general election of the Dáil.

Article 19 allows for a variation of the basis of election as set out above, in order to admit of functional representation. The Article reads as follows:

"Provision may be made by law for the direct election by any functional or vocational group or association or council of so many members of *Seanad Éireann* as may be fixed by such law in substitution for an equal number of the members to be elected from the corresponding panels of candidates constituted under Article 18 of this Constitution" (which, as shown above, refers to the composition of the Senate).

(See text given in *Constitutions of All Countries*, Vol. 1, p. 201; and Keith: *The Dominions as Sovereign States*, pp. 314-316.)

NOTE 29 (p. 210)

Germany: Reichsrat

The Reichsrat in the Constitution of 1919 was calculated to give some real elements of federalism to the German state. The Nazi Revolution, as explained in the Introduction (p. xxxviii), destroyed the States as federal units, and the Law of January 30, 1934, was followed by a law of February 14, "which did away with the Reichsrat as well as with separate diplomatic representatives of the States in the Reich." (See Lichtenberger: *The Third Reich*, p. 75.)

NOTE 30 (p. 222)

British Cabinet

Some modification of certain statements here is necessitated by the persistence of National Government under which the Cabinet is drawn from various parties and groups, even though the National Crisis of 1931 might be said to have been dissolved and in spite of the clear majority of one Party (Conservative) in the House of Commons, and by the legislation of 1937 (Ministers of the Crown Act) which has, in fact, given statutory recognition to the office of Prime Minister and to the Cabinet. (See Introduction, pp. xx ff.)

NOTE 31 (p. 226)

Responsible Government in Dominions

The position outlined here in the case of most Dominions has now been given statutory force by the Statute of Westminster (see Introduction, pp. xxii-xxiv). In the case of Ireland, the section of the Constitution of the Irish Free State (1922) quoted (p. 225) is now, of course, obsolete, for under the new Constitution the Executive Authority is no longer vested in the King but in a President elected by direct vote of the people. The Constitution abolishes the office of Governor-General and contains no oath of allegiance. (See Introduction, pp. xxiv-xxv.)

NOTE 32 (p. 232)

German Cabinet

This section is now, of course, obsolete. (See Note 2, p. 355, and Introduction, pp. xxxviii ff.)

NOTE 33 (p. 236)

Cabinet in Yugo-Slavia, Austria, Czecho-Slovakia, Poland, and Finland

Some statements in this section require revision, in the light of events since 1930.

(a) *Yugo-Slavia* (p. 233). Here a new Constitution was promulgated in 1931 which replaced the original Constitution of 1921, referred to in the text. But the constitutional guarantees secured on paper by a true parliamentary régime contained in the new document, have in fact remained suspended, first under the Premiership of General Zifkovitch, and more recently under the virtual dictatorship of Prince Paul as chief Regent and M. Stoyadinavitch as Prime Minister.

(b) *Austria*.—With the annexation of Austria by Germany, in 1938, the Austrian Constitution of 1920 has, of course, become a dead letter, and what applies to Germany now also applies to Austria, for they, together with the annexed provinces of Czecho-Slovakia, form a unitary state.

(c) *Czecho-Slovakia*.—For some time before the surrender of the Sudetenlands in 1938 the constitutional stability of Czecho-Slovakia had been seriously affected by the shadow of German force on her frontiers. The founder of the Republic and its first President, Thomas Masaryk, retired in 1935, and died in 1937. He was succeeded by his pupil, Edward Benes, who continued a constitutional policy until his resignation in the crisis of 1938. He was succeeded by Dr. Hacha, and a revision of the Constitution, which in effect made of Czecho-Slovakia a federal state, was carried out. By this arrangement the Slovaks were given a separate Diet and their own Prime Minister, while preserving the union of the two parts of the State. The attempt made by Slovak separatists in 1939 to establish the complete independence of Slovakia, led to the intervention of Germany and the complete destruction of Masaryk's Republic. The Czech element of the State was incorporated in the Reich, as the Protectorate of the Provinces of Bohemia and Moravia; Slovakia remained precariously independent, by the grace of the Reich; and Carpatho-Ukraine (Ruthenia) passed under the control of Hungary.

(d) *Poland*.—A new Constitution was promulgated in Poland in 1935. This replaced the Liberal Constitution of 1921, which, however, had been for a long time in suspense under the military dictatorship of Marshal Pilsudski, who died in 1935, shortly after signing the new Constitution. The new Constitution introduces a restricted parliamentary system of two Houses (Senate and Diet). The President is invested with quasi-dictatorial powers and the right to nominate a third of the Senate, while the new electoral law practically disfranchised most of the Opposition Parties. In effect, therefore, the Dictatorship continues, though later efforts at broadening the base of the restricted parliamentary system have not been entirely unsuccessful. (See *Annual Register* for 1935, p. 214, and *Whitaker's Almanack* [1938], p. 994.)

(e) *Finland*.—Finland has managed, amidst great difficulties, to retain the true forms of Cabinet Government. For example, in 1936 the Diet rejected a bill brought in by the Government to enable the President to suspend the constitutional guarantees for personal liberty in times of crisis.

NOTE 34 (p. 242)

U.S.A. : Presidential Election Figures for 1936

More recent elections show the same discrepancy referred to in the text. In the Presidential Election of 1932 Mr. Franklin Roosevelt polled 22,821,000 popular votes against Mr. Hoover's 15,761,000. In the election of 1936 (Mr. Roosevelt's candidature for second term) the President's popular vote totalled 27,751,000 against Mr. Landon's 16,681,000 (*i.e.* more than half Roosevelt's). Yet Roosevelt carried

every State but two in the Electoral College, or, in terms of State votes, his majority was 523 against 8. (See *Annual Register* for 1936, p. 292.)

NOTE 35 (p. 244)

Powers of American President among Constitutional Executives

The Statement in the text (p. 243) that "in no constitutional state in the world to-day does there exist an officer with such vast powers as those of the President of the American Union," remains true, but the exceptions given, namely Turkey and Italy, should either have Germany added or be dropped altogether. Certainly Italy and Germany cannot be classified any longer as constitutional states or as even remotely comparable, from the constitutional point of view, with the United States, and it is doubtful whether Turkey either can be included.

NOTE 36 (p. 252)

Italy : Non-Parliamentary Executive

The statement here (p. 251) concerning the complete discrediting in Italy of parliamentary government, has proved only too true, and the Executive, referred to earlier, has now become definitely non-parliamentary. (See Introduction, pp. xli ff. and Note 2 above, p. 356.)

NOTE 37 (p. 254)

Executive in Turkey

The Turkish Republic did not, in the intervening years, become less of a virtual dictatorship as is indicated here (p. 254), but meanwhile Kemal Atatürk has died, though it is not yet possible to say what changes in method, if any, are likely under his successor. (See Note 2 above, p. 355.)

NOTE 38 (p. 264)

German Judiciary

The statement on p. 264 about Federal judges in Germany is no longer true, since the abolition of the federal system under the Nazi régime. (See Introduction, p. xxxviii.)

NOTE 39 (p. 271)

Administrative Law in Germany

As to administrative law in Nazi Germany, "the Nazi theory is that law is merely a weapon in the political struggle." "One of Hitler's first acts was to institute special courts for political offences—courts where the offence did not have to be proved and from which

there could be no appeal." The new Penal Code, established by the régime, makes intention the all-important factor, and since the Nazi Party is now identified with the State an offence against the Party becomes "*ipso facto* an offence against the state." "The law and the will of Hitler are one," says Göring. In these circumstances almost all law becomes administrative law, and the impartiality of justice is completely lost. (See Roberts: *The House that Hitler Built*, pp. 282 ff.)

NOTE 40 (p. 289)

Referendum in Germany

The referendum in Germany as a constitutional guarantee has, of course, disappeared. The plebiscite, as used by Hitler, is merely for purposes of *ex post facto* sanction of action already taken. (See Introduction, pp. xi-xli and Note 13 above, pp. 360-361.)

NOTE 41 (p. 292)

Popular Initiative in Germany, and Recall in Russia

The Popular Initiative in Germany, described on p. 291, has gone the way of the Referendum, with the Nazi Revolution and the destruction of the Weimar Constitution.

The principle of the Recall of representatives or other elected officials which was contained in the original Soviet Constitution in Russia (though, as stated here, it was a dead letter), does not appear at all in the new Constitution of the U.S.S.R. of 1936, described in the Introduction, pp. xlviii ff. (See text in *Annual Register* for 1936, pp. 85 ff.)

NOTE 42 (p. 294)

Germany : Referendum

As this reference is to the Weimar Constitution, it no longer holds.

NOTE 43 (p. 299)

Persia (Iran), Japan and China

Persia has now reverted to its original name of Iran. Though there still exists a partially representative legislature, the Shah is actually all-powerful, and in 1939 he tried to strengthen the bases of his dynasty by marrying the Crown Prince into the Egyptian royal family.

The Government of Japan is certainly stable but perhaps can hardly be called properly constitutional. The chaos in China, referred to in the text, has only increased with the Japanese invasion which began in 1937.

NOTE 44 (p. 304)

India : Responsible Government

In India much progress has been made since these words were written in the development of Responsible Government, by the implementation of the Government of India Act, 1935. (See Introduction, pp. xxviii ff.)

NOTE 45 (p. 306)

Malta : New Constitution

As an example of changes under this head, we may refer to Malta. The Maltese Constitution of 1921 was suspended in 1933 and withdrawn in the following year, but in 1939 the island regained its constitutional rights in a new Constitution proclaimed in February of that year. Under this Constitution there is a Council consisting of eight official, two nominated and ten elected members. The Governor presides over this with a casting vote. (See *The Times*, February 27, 1939.)

NOTE 46 (p. 315)

Ireland, Germany, Russia : Economic Organisation

The Constitutional arrangements described here for the economic organisation of the state in Ireland, Germany, and Russia are now obsolete.

(a) The arrangements in Ireland were those laid down in the Constitution of the Irish Free State (1922). There is no direct reference to Functional or Vocational Councils in the new Constitution of Eire (1937), but Article 45 of the original Constitution quoted is replaced by Article 19 of the new one under the heading of Senate (*Seanad Eireann*), which allows for the direct election of members of the Senate by any functional or vocational group. Article 19 is quoted in Note 28 above (p. 365).

(b) In Germany the Economic Councils were specifically abolished in 1935 and replaced by a Reich Economic Chamber which has no representative elements in it. (See Introduction, p. xxxix.)

(c) The new Constitution of the U.S.S.R. of 1936 retains a functional representation only in the sense that, according to Article 2 of the Constitution, "the political foundation of the U.S.S.R. is formed by the soviets of toilers' deputies which have grown and become strong as a result of the overthrow of the power of the landlords and capitalists, and the conquest of the dictatorship of the proletariat." But instead of the Congress of Soviets, as under the original Constitution, there is now, on paper at any rate, a two-Chamber Parliament (Supreme Council of the U.S.S.R.) democratically elected by secret direct and equal ballot; so that, in effect, if the new Constitution

works, it would appear that the occupational constituency has been superseded by the territorial constituency. (See Introduction, pp. xlviii ff., and *Annual Register* for 1936, p. 201, and pp. 85 [Second Part] ff. [under Public Documents] for text of Constitution.)

NOTE 47 (p. 324)

Italy : Corporative State

For the progress of the Corporative State in Italy since the point reached in the text, see *Introduction*, pp. xli ff.

NOTE 48 (p. 330)

League of Nations : Membership in 1939

Several changes have taken place in the membership of the League since 1930. In 1939 there were 46 state members. Mexico was admitted in 1931; Turkey and Iraq in 1932; the U.S.S.R., Afghanistan and Ecuador in 1934; and Egypt in 1937. Germany and Japan withdrew in 1933; Paraguay in 1935; Guatemala, Honduras, and Nicaragua in 1936; Salvador and Italy in 1937; Chile in 1938; and Hungary and Peru in 1939. (More strictly, they gave notice of withdrawal in the years mentioned and the withdrawal under the constitution becomes effective two years later.) Austria and Czecho-Slovakia, having lost their independence, are naturally no longer members, while Ethiopia (though the ex-Emperor was in 1938 still admitted to meetings) has presumably ceased to be a member with the recognition by most of the Powers of the Italian Conquest of Abyssinia. (See *Essential Facts about the League of Nations*, Ninth Edition : Revised—1938, pp. 32–35, 37, and 47, and *Whitaker's Almanack* for 1939.)

NOTE 49 (p. 333)

Council of the League : Membership and Meetings

The Council of the League has changed its composition a good deal in recent years, from the point of view of both size and membership. As to permanent Members, when the U.S.S.R. joined the League in 1934 she was given a permanent seat on the Council, and this raised the number of permanent Members to six. When Germany and Japan withdrew from the League in 1935 (having given notice in 1933) the number was reduced to four. In 1939, with Italy's departure, the effective number was reduced to three. As to non-permanent Members, in 1936 the number was provisionally increased from nine to eleven. Thus in 1939, the total membership of the League Council was fourteen, *i.e.* three permanent and eleven non-permanent Members. (See *Essential Facts about the League of Nations*, as above, pp. 67 ff.)

NOTE 50 (p. 336)

Article 16 of the Covenant of the League

Article 16 of the Covenant of the League has been the subject of a good deal of discussion in recent years. (See *Introduction*, pp. 1 ff.)

NOTE 51 (p. 340)

The League and Sovereign Powers

It is still true that no member of the League has sacrificed "one tiny fragment of its sovereignty," but the history of the League since 1930 only confirms the view stated here that, without some such sacrifice, the League cannot hope to maintain any real influence in the development of international constitutionalism. (See, for example, W. Bryn Thomas : *An International Police Force*, pub. Allenson, 1936.)

NOTE 52 (p. 342)

The Constitutional Block

"The great Constitutional block" no longer includes Germany or Czecho-Slovakia, now incorporated in the Reich. The expression "the real democratisation of Germany" is now seen to have been premature. Perhaps, also, the addition of Japan was somewhat optimistic. Even omitting these, however, and if we add Finland, we have the list of democracies of C. K. Streit's plan referred to in the *Introduction* (pp. liii-liv) and it remains a formidable phalanx, as he says, of 300 million free men.

NOTE 53 (p. 349)

Advisory Councils in Ireland and Germany

Economic Advisory Councils exist no longer in Ireland or Germany. (See Note 46 above, p. 370.)

NOTE 54 (p. 351)

Soviet Russia and the "International"

The anti-Trotskyism of Stalin's purges in the U.S.S.R. constitutes a reaction from Marx's internationalism, while the tendency of the League of Nations, as we have said, has not so far been in the direction of federalism. Nevertheless, the feeling against Communism as an "international" danger has been sufficiently strong to cause the signing of the agreement between Germany, Japan, and Italy, known as the Anti-Comintern Pact. The original agreement was made between Germany and Japan, and was signed at Berlin on November 25, 1936. Italy joined later, and all three Governments signed the Pact at Rome in 1937. (The full text of the Pact is given in Lichtenberger : *The Third Reich*, Appendix VII, pp. 317-318.)

NOTE 55 (p. 352)

The Fate of Bohemian Nationalism

What happened to Bohemia in 1939, when Czecho-Slovakia was destroyed by Germany, and Bohemia and Moravia were made provinces of the Reich, is a sad commentary on this statement. But as the national spirit of the Bohemians survived the disaster of the battle of the White Mountain in 1620 to triumph in independence once more in 1918, so may it survive the German rape of 1939 to emerge again in freedom. (See Note 33 (c) above, p. 367.)

•

INDEX

NOTE.—For the convenience of the reader the sub-headings are arranged in alphabetical order and not in the order in which the subjects appear. The references are to the original text only.

- Abdul Hamid II, Sultan of Turkey, 44-5, 252
 Act of Settlement, Judges and, 261; office-holders and, 219-20; triumph of Parliament, and, 134
 Acts of Union, in Britain, 84-5, 91, 191-2
 Administration, and executive, 213
 Administrative Law; see Law, Administrative.
 Administrator (Governor) in Crown Colonies, 305
 Alfred the Great, government of, 132
 Allenstein, and Plebiscite, 284
 Alliance, sovereignty and, 78
 Alsace - Lorraine, reincorporation with France, 283-4
 Amendment, constitutional, Australia, in, 147-8, 155-7; Belgium, in, 146-7; British Dominions, in, 148; Bulgaria, in, 148; Canada, in, 153-4; Europe generally, in, 148; Finland, in, 143; France, in, 147, 148-51; Germany, in, 147, 151-2, 288; Great Britain, in, 132-6; Irish Free State, in, 155; Italy, in, 128, 141-3; Latin America, in, 148; methods of, 130, 145-8; New Zealand, in, 139-141; Rumania, in, 147; South Africa, in, 147, 154-5; Switzerland, in, 147-8, 157-8; U.S.A., in, 109-10, 148, 158-60, 170-71, 202, 239-40
 America, Latin; see Latin America
 American Commonwealth; see United States
 Anarchism, Kropotkin and Spencer, of, 12; social chaos and, 344
 Anatolia, Turks and, 252
 Anglo-Saxons, methods of government of, 133
 Angora, new real capital of Turkey, 252
 Anne, Queen; Cabinet and, 218; Treaty of Utrecht and, 192
 Annual Message, of President of U.S.A. to Congress, 242
 Antipodes, Self-Government in, 297
 Argentine: compulsory voting in, 168; federalism in, 121; voting age in, 167
 Aristocracy, Aristotle on, 56; Japan, in, 199; Kant and Rousseau on, 57; Switzerland, in, 108
 Aristotle, Classification of constitutions of, 55-7; conception of state of, 15-16; cycle theory of, 55-6, 57; democracy and, 56, 163; political education and, 16; *Politics*, 17; polity of, 56-7
 Armistice, at end of Great War, 283
 Article 16, of Covenant of League of Nations, 335-6
 Articles of Confederation, in N. America, 103, 159
 Asquith, H. H. (Lord Oxford), Administrations of, 221
 Assam, Provincial Council in, 303
 Assembly, France, National, in, 38, 149-51, 205, 227; League of Nations, of, 330-32, 334, 335, 337-9; Switzerland, Federal (or National), in, 157, 244-6, 271; Turkey, Grand, in, 253-4
 Augustus, first Roman Emperor, 21, 22
 Australia, Cabinet in, 224; Canada, compared with, 111, 113-17, 154; Commonwealth of, 156, 224; constituency in, 112; constitution of, 112, 113, 139, 155-7, 204,

- 298; democracy in, 111, 112, 156; executive in, 112; Federal District of Canberra, 113; federalism in, 61, 98, 110-13, 115-17, 349; first settlement in, 111; Germany, compared with, 119, 120, 207; Governor-General in, 112, 156, 204; House of Representatives in, 112, 156, 168, 204, 224; Irish Free State, compared with, 86, 154; Italy, compared with, 323; judiciary in, 102, 112, 264; military service in, 289; New Zealand and, 88, 140; preferential voting in, 179; Privy Council and, 112; Prohibition in, 289; Referendum in, 147-8, 156, 287, 289, 294; "Reserve of powers" in, 112; Responsible Government in, 224; Senate in, 68, 112, 113, 115, 156, 168, 201, 203-4, 224; South Africa, compared with, 154; State Governors in, 113; state integration in, 79; States in, 62, 112-13, 156, 204; Switzerland, compared with, 110, 207-8; U.S.A., compared with, 110-13, 201, 204.
- Austria, Bismarck and, 117; Bundesrat in, 233; Cabinet in, 233-4, 238; constituent assembly in, 233; Constitution, of 1869, 44; Constitution, of Republic of, 233-4; disintegration of, 44, 77; Enlightened Despotism in, 29; France, compared with, 233; German Republic and, 233, 284-5; *Herrenhaus* in, 190; Holy Alliance and, 326; Hungary and, 78; Italy and, 94; Klagenfurt and, 284; League of Nations and, 330; legislature in, 233-4; minorities in, 165; *Nationalrat* in, 233-4; non-German elements in, 44, 46; Peace Treaties and, 233; P.R. in, 179; President in, 233-4; Provinces in, 233; Prussia and, 117; Switzerland and, 107.
- Autocracy, Continent of Europe, on, 31; defined, 11; democracy and, 164; George III and, 31; Germany, in, 213; Kant and, 57; Roman Empire, in, 21-2; Rousseau and, 57; Russia, in, 11-12, 213; Stuarts and, 31; Turkey, in, 252.
- Autonomy, Greek, 15, 28; Northern Ireland and, 89; sovereignty and, 350.
- Bacon, Sir F., and Administrative Law, 272.
- Bagehot, W., Cabinet, on, 228; *English Constitution*, 215.
- Balance of Power, and peace, 328.
- Balkan States, illiteracy in, 183; nationalism in, 44-5.
- Ballot Box, and voting systems, 168.
- Baltic States, Great War and, 143.
- Barons, feudalism in England and, 133; Great Council, in, 217; House of Lords, in, 190, 191.
- Bavaria, in new Germany, 120.
- Belgium, Chamber of Deputies in, 179; constitution of, 131; constitutional amendment in, 131, 147; constitutionalism in, 342; independence established, 41; invasion of by Germany, 78; judiciary in, 265; local government in, 179; P.R. in, 179, 181; Referendum, suggested in, 294; Rule of Law in, 268; Senate in, 179; suffrage in, 166.
- Bengal, Provincial Council in, 303.
- Bentham, J., and Government, 309.
- Bi-Cameral System, general conclusions concerning, 210; House of Lords and, 194; importance of, 187-9.
- Bill of Rights, constitutional importance of, 32; "Dispensing Power" in, 137; law of the Constitution, 63, 134; Locke and, 35-6; unrepresentative parliament and, 36.
- Bishops, in British House of Lords, 192.
- Bismarck, Prince von, Austria and, 117; German Empire and, 118; nationalism and, 43-4; Wilhelm II and, 70.
- Blackstone, W., *Commentaries of Laws of England*, 215, 219.
- Bluntschli, J. K., classification of constitutions of, 58.
- Board of Control, for India, established, 301.
- Bohemia; see Czecho-Slovakia.
- Bolshevism, founded on teaching of Marx, 47; Italy, in, 248; Russia, in, 45, 315-17, 351.
- Bonapartists, in France, 150, 227.

- Botany Bay, Settlement of, 111
 Boulanger, G., and French crisis of 1886, 227
 Bourbon Dynasty, France, in, 40, 150, 227; Two Sicilies, in, 94
 Bourgeoisie, France, in, 29; Russia, in, 315
 Brazil, federalism in, 121
 Britain; see Great Britain
 British Empire, Constitution of, 85; federalism and, 62, 83, 85-7
 British North America Act (1867) and Constitution of Canada, 114, 115, 153-4, 196, 224
 Bryce, Lord, classification of constitutions, on, 59; constitution, on, 10, 124; documentary constitutions, on, 124-5; institutions, on, 121; Latin America, on, 120-121; Roman Constitution on, 18; sovereign in Britain, on, 6; Third French Republic, on, 150
 Budget, Lloyd George's of 1909, 135
 Bulgaria, constitutional amendment in, 148; independence declared, 45; Jugo-Slavia and, 95; legislature in, 66; suffrage in, 166; uni-cameral system in, 187
 Bundesrat, Austria, in, 233; Germany, in, 118, 152, 209, 271
 Bureaucracy, Enlightened Despots, of, 29, 30; Russia, in, 213; Tudors, of, 30
 Byzantine Empire, after fall of Western Empire, 23
 Cabinet, Australia, in, 224; Austria, in, 233-4; Bagehot on, 221; Canada, in, 223-4; Council of League of Nations, compared with, 332; Czecho-Slovakia, in, 234, 255; democracy and, 219; electorate and, 220, 221; executive and, 8; Finland, in, 235; France, in, 69, 206, 216, 226-30, 244, 255; Germany, in, 230-32; government by, 70-71, 216; government of the day and, 6-7; Great Britain, in, 69, 216-22, 226-30, 228-9, 254-5; Great Council and, 217; growth of, 32, 135; Irish Free State, in, 225; Italy, in, 247-52, 254, 256; Japan, in, 217; Parliament and, 218, 222; Poland, in, 234; Post-War Republics, in, 232-4; P.R., and, 181-2; Presidential system, compared with, 237-9, 254-6; President's, in U.S.A., 237; Privy Council, and evolution of, 217-222; Reform Act of 1823, and, 42; Rumania, in, 233; Self-Governing Dominions, in, 216, 222-6, 228; South Africa, in, 225; Traill, H. D., on, 219; Turkey, in, 253-4; Walpole and, 217, 219, 256
 California State (U.S.A.), direct democratic checks in, 288
 Caliphate, of Sultan of Turkey, 252
 Canada, Act of 1871 concerning Senate, 197; Australia, compared with, 111, 113-17, 154; British and French in, 114; British North America Act (1867) and, 114, 115, 153-4, 196, 224; Canada Act (1840) and, 114, 196, 223; Constitution of, 139, 153-4, 197, 298; constitutional amendment in, 153-4; Dicey on, 116; federalism in, 61, 99, 100-101, 110, 113-17; France, compared with, 113; Germany, compared with, 120; Governor-General in, 113, 196-7, 223-4; Great Britain, compared with, 113; High Commissioner in, 225; Irish Free State, compared with, 86, 154, 225; legislature in, 153-4, 196, 224; Lieutenant-Governors in, 115; Lord Durham and, 223; New Zealand, compared with, 113, 140-41; Parliament in, 153-4, 196, 224; Pitt's Canadian Act (1791) in, 196; P.R. in, 178; Privy Council and, 116, 140; Privy Council in, 224; provinces in, 114, 115-16, 153-4, 196-7; rebellions in, 223; "reserve of powers" in, 100-101, 115, 116; Responsible Government in, 223-4; Senate in, 68, 115-16, 196-8; South Africa, compared with, 113, 114, 154; Switzerland, compared with, 113; unitarianism abandoned in, 114-15; U.S.A., compared with, 113, 114-15, 117, 238
 Canada Act (1840), 114, 196, 223
 Canberra, federal district in Australia, 113
 Canning, G., and Confederation of Europe, 327

- Cantons, in Switzerland, 98, 107, 109, 110, 157, 179, 207-8
- Cape Colony, Responsible Government granted to, 224
- Cape of Good Hope, as Province of Union of South Africa, 90
- Capitalism, Industrial Revolution and, 41; Italian Corporative State and, 318
- Castlereagh, Lord, and Concert of Europe, 327
- Catholic Emancipation, in Britain, 105
- Caucus (party), Italy, in, 181; modern democracy, in, 184; P.R. and, 181; U.S.A., in, 243
- Cavour, Count, Italian Unity and, 93; political morality and, 28
- Cecil, Lord (of Chelwood), House of Lords and, 191, footnote; League of Nations, on, 330-31
- Chamber of Deputies, Belgium, in, 179; Czecho-Slovakia, in, 234; France, in, 150, 205-6, 227-9; Irish Free State, in, 155, 206-7, 225; Italy, in, 196, 247, 321, 322
- Chancellor, Federal, in Germany, 231-2; Imperial, in Germany, 70, 230-32
- Charles I (of England), Civil War, and, 31, 32, 134, 164; execution of, 191; responsibility of ministers and, 218
- Charles II, Cabinet, and, 218; Restoration of Stuarts, and, 31
- Charles Albert, King of Sardinia, and the *Statuto*, 141-43
- Charles the Great, and Holy Roman Empire, 23, 26, 117
- Charter, East India Company, of, 301; Labour in Italy, of, 319, 320, 323-4; Louis XVIII (of France), of, 125
- Chartered Company, of Southern Rhodesia, 91
- Chartism, political importance of, 42, 165
- Chelmsford, Lord, Viceroy of India, 302
- Chief Magistrate, in U.S.A., 330
- China, constitutionalism spreads to, 45; nationalism in, 46; republic established in, 299
- Christian Fathers, and equality, 164
- Church, Catholic, Conciliar Movement in, 26-7; Great Schism in, 26; growth of, 23; Italy, in, 142; England, of, and P.R., 178, 180; State, in Germany, 28; voluntary association, as, 3
- Citizenship, Ancient Greek, 16; post-War Europe, in, 235-6
- City-State, Greece, in, 15-17, 98; Rome, in, 18-19
- Civil Service, executive and, 8, 213; parliamentary seats, and, 220; Secretariat of League of Nations compared with, 333-4
- Classification of Constitutions, Aristotle's, 55-7; Bluntschli's, 58; Kant's, 57; Modern, 58-9, 73; Montesquieu's, 57; Rousseau's, 57
- Coalition Government, Disraeli on, 182; France, in, 228-9; P.R., under, 181-2
- Codification of Law, in Continental states, 72, 261-2, 269-76
- Collectivism, executive and, 212, 272-5; *Laissez-faire* and, 309-10; modern legislation and, 7, 162; political parties and, 310
- Colonial Office (British), and Crown Colonies, 305-6
- Colonies, British, America, in, 79, 86, 103, 125, 158, 298; Australia, in, 111, 112; constitutional treaties with, 135; Crown, see Crown Colonies; English Law system in, 269; federation in, 87; religious liberty and, 164; "Ripe Fruit Theory" concerning, 86; French, and the Senate, 205-6; League of Nations and, 330, 336
- Colorado State (U.S.A.), direct democratic checks in, 288, 291-2, 295
- Commission, Royal, on Electoral Reform in Britain, 175, 180; Simon, on Indian affairs, 303
- Common Law States, League of Nations and, 334; Rule of Law in, 72, 258-62
- Commonwealth (in England in seventeenth century), documentary constitutions under, 32, 134; uni-cameral system during, 189, 191
- Communist, Italy, party in, 248; Karl Marx, Manifesto of, 43; Russia, régime, in, 311, 315, 317; Theory, and coercion, 311
- Comte, A., defines Progress, 127

- Concert of Europe, and Eastern Question, 327-8
- Conciliar Movement, importance in history of constitutionalism, 26-7
- Confederation, Europe, of, 327; federation and, 98-9; Germanic, 98-9, 117, 125; North German, 117; Swiss, 107
- Conference, Hague, 328, 330; Lausanne, of, 252; Speaker's, on Electoral Reform in Britain, 175, 180
- Conflict Court, in France, 270, 271
- Congress, Berlin, of, 44; Deputies, of, in Spain, 200; system in Europe, 327; U.S.A., in, 70, 71, 82, 159, 171, 174-5, 202-3, 240-44, 261, 346; Verona, of, 327
- Constantinople, Roman Empire in East and, 20, 23; Turks and, 19, 23, 252
- Constituency, dangers of enlargement of, 181; form and distribution of, 163-6; multi-member, 175-80; occupational, 311-12, 322; single-member, 112, 172-5, 176-7; types of, 67
- Constituent Assembly, Austria, in, 233; France, in, 149-50; Germany, in, 230, 233; Ireland, in, 86; Jugo-Slavia, in, 233; ordinary legislature and, 145-7; Turkey, in, 253
- Constitution, Amendment of, 65, 128, 145-8, 345-6; Argentine, of, 121; Australia, of, 111, 155-7, 204, 298; Austrian Republic, of, 233-4; Brazil, of, 121; British, 29-34, 132-8, 215, 345; British Dominions, in, 110, 139, 153-7; Canada, of, 153-4, 197, 298; Characteristics of, 10; Czechoslovakia, of, 234; defined, 10, 124; documentary and non-documentary, 64, 124-7, 131, 134; federal state in, 61, 80, 82, 101-103; Finland, of, 143, 234-5; flexible, 64-5, 124-7, 129-32, 146; France, of, 146, 148-51, 205, 215, 227, 259, 345; French conception of, 149; German Empire, of, 118, 125, 171, 271; German Republic, of, 119, 120, 151-2, 171-2, 209, 230-32, 271, 291, 312-15; Irish Free State, of, 86, 89-90, 139, 155, 225; Italy, of, 141-3, 195-6, 247-51, 316-19; Japan, of, 167, 198; Jugo-Slavia, of, 233; League of Nations, of, 326-40, 349-50; Mexico, of, 121; Netherlands, of, 190; New Zealand, of, 139, 298; Poland, of, 234; Rigid, 64-5, 81, 125, 129-30, 146, 345-6; Russian Soviet Republic, of, 315-17; Servia, of, 233; South Africa, of, 154-5, 200, 298; Spain, of, 11, 190, 312; Switzerland, of, 41, 108, 109, 157-8, 208, 244-6; Tocqueville, de, and, 124, 126; Turkey, of, 44-5; Turkish Republic, of, 252-4; types of, 63-4; unitary state, in, 81; U.S.A., of, 146, 148-51, 158-60, 202, 215, 239-42, 269, 298
- Constitutional Amendment; see Amendment, constitutional.
- Constitutionalism, Ancient Greece, in, 15-17; backward peoples and, 297-301; Balkans, in, 298; China, in, 299; documentary, beginnings of, 34; Egypt, in, 299-300; Europe, in, 39-45, 298, 342; Europe, beyond, 45-6, 298-301; executive and, 212; federalism and future of, 346-52; France, in, 34-9, 148-9; Great Britain, growth of in, 29-34; Great War, 45-8, 232, 298; history of, summarised, 48-50; Middle Ages, during, 23, 27; North America, in, 34-9, 148-9; outlook for, 342-52; Persia, in, 299; Poland, in, 298; Rome, in, 18-23; Russia, in, 298; Separation of Powers, and, 214-16; sovereignty and future of, 344-52
- Consul, Napoleon as, 282; Roman, 19, 248
- Convention, constitutional, 126-8, 134-5, 136-7, 142, 158, 217; constitutional amendment, for, 130, 146, 148, 160; England, in (1689), 35; French, of 1875, 149; Philadelphia, at (1787), 104, 159; South Africa, in, 90
- Convocation, and clergy in England, 191
- Corn Laws, repeal of, 105
- Corporate State, in Italy, 316-24, 344, 349
- Council, Crown Colonies, in, 305-6; Economic, in Germany, 312-15,

- 318, 348, in Irish Free State, 312, 348; England, history of, in, 26, 31, 162, 190, 217-18; Executive, in Ireland, 225; Federal, in Switzerland, 157, 244-6; General, in Fascist Italy, 319, 322, in mediæval church, 26; Grand Fascist in Italy, 321-3; India, in, 302-3; League of Nations, of, 331-3, 334-9; Ministers, of, in France, 227; Privy, see Privy Council; Soldiers and Workers, of, in Germany, 315; State, of, in Finland, 235, in France, 227, 270-1; Tudors, under, 272; Workers of, in Russia (Soviet), 315
- Council of States (*Ständerat*), in Switzerland, 68, 109, 157, 189, 207-9, 244
- Coup d'Etat*, Lenin in Russia, of, 315; Louis, Napoleon, of, 282; Napoleon I, of, 282
- Court of Cassation, Final Court of Appeal in France, 261
- Covenant, of League of Nations, 330-37, 351
- Criminal Law, reform of, 105
- Crispi, F., Prime Minister of Italy, and the Italian Constitution, 141
- Cromwell, Oliver, Protectorate of, 32, 187, 191
- Crown Colonies, Colonial Office and, 306; Executive Council in, 305-6; Governors in, 305-6; legislative assemblies in, 305-6; Orders in Council for, 306; Rule of Law in, 305; Self-Governing Dominions and, 304; Self-Government in, 301, 304-7; types of, 305-6
- Custom, compared with law, 4-5, 126-7; defined, 4-5; unwritten law, as, 5
- Czar, see Emperor
- Czecho-Slovakia, Cabinet in, 234, 255; compulsory voting in, 168; Constitution of, 125, 234; constitutionalism in, 342; Germans in, 284; independence of, 47; legislature in, 182, 234; nationalism in, 352; P.R. in, 179, 182; President in, 234; Prime Minister in, 234; Republic of, 234; Self-Determination and, 283; state-integration of, 79
- Dail Eireann (Chamber of Deputies), in Irish Free State, 206-7, 225
- Danzig, Free City of, and League of Nations, 336
- Declaration of Independence (American), constitutional importance of, 37-8; democracy and, 159, 164
- Declaration of Rights of Man (French), constitutional importance of, 38-9; democracy and, 164
- Defence of the Realm Act, and Rule of Law, 273
- Democracy, Aristotle's view of, 56, 163; Athenian, 16-17, 163, 286; Australia, in, 111; Cabinet and, 219; defined, 11; economic, 281, 308-11; executive and, 212; France, in, 229; franchise, and, 167; Germany, in, 70, 230, 232, 343; Great War and, 47; growth of, 163-6; Kant on, 57; Latin America, in, 120; legislation and, 162, 212; Liberal, in Italy, 318, 322; modern state, in, 57; Napoleon and, 352; Plato's view of, 56; representative, 11, 163-6, 172, 183-5; Roman, 19, 22-3, 164; Rousseau and, 36, 37, 57, 286; Russia, in, 213; Swiss, 109, 164; Wilhelm II and, 352
- Denmark, constitution of (1864), 44; constitutionalism in, 342; P.R. in, 179; Schleswig, and, 43-4, 284; Second Chamber in, 179; voting age in, 168
- Dependency, India as, 304
- Despotism, Aristotle on, 55, 56; Enlightened, on Continent, 29, 31, 33, 36; Kant and Montesquieu on, 57; Social Contract Theory and, 35; Tudor, in England, 30-31, 134
- Devolution, Great Britain, in, 347; South Africa, in, 91
- Dicey, Prof. A. V., Benthamite Individualism, on, 309; federal state, on, 60; French judges, on, 265; law-making judges, on, 262; laws and conventions of Constitution, on, 136, 137; political unitarianism, on, 60; Privy Council and Canada, on, 116; Rule of Law, on, 366-7
- Dictatorship, Greece, in, 298; Italy,

- in, 251-2, 298; Poland, in, 234, 298; Roman Republic, in, 20; Spain, in, 11, 199, 298; Russia, in, 315; Turkey, in, 254
- Diet of Frankfurt, 99
- Diplomacy, executive and, 212; Senate in U.S.A., and, 203
- Directory, France, in, 282; Spain, in, 199
- Disestablishment, of Welsh Church, 138
- Disraeli, B. (Lord Beaconsfield), coalitions, on, 182; Reform Bill of, 165
- Dissolution of Parliament, Australia, in, 204; constitution, for amendment of, 147; German Republic in, 231; Great Britain, in, 221; South Africa, in, 200
- Divine Right, Social Contract Theory and, 36
- Dominion Home Rule; see Dominion Status
- Dominion Status, Canada, in, 114; Colonies, and, 86; Dominions, various, in, 135-6; Irish Free State, in, 86, 89; Southern Rhodesia, in, 87, 91
- Droit Administratif*; see Law, Administrative
- Dubois, P., international ideals of, 327
- Duce, powers of, in Italy, 249-51
- Duma, failure of, in Russia, 45
- Durham, Lord, Report of, and Responsible Government, 223
- Eastern Question, Concert of Europe and, 327-8
- East India Company, Charter granted to, and abolished, 301
- Economics, defined, 1
- Education, citizenship and, 16; P.R. and political, 181; public, 105, 183
- Edward I, Britain, unification of, and, 84; Constitution, growth of, and, 133; Parliament, and, 190-91
- Edward III, Lancastrians and, 30; Parliament under, 190
- Egypt, British Protectorate in, 299-300; constitutional monarchy in, 300; Persia, compared with, 299; representative assembly in, 300; Senate in, 68
- Elections, France, general in, 229; Great Britain, bye in, 229, general in, 172-5; U.S.A., Congressional in, 174-5, Presidential in, 64, 170-71, 239-43, 282-3
- Elector of Saxony, and State Church, 28-9
- Electoral Colleges, in France, 205
- Electoral Reform, Great Britain, in, 175; ideal electorate and, 184-5; Italy, in, 251, 321-2; U.S.A., in, 175
- Electoral system, classification of constitutions, in, 66-7; Germany, in, 171-2; Great Britain, in, 168-70, 172-5; Italy, in, 142; U.S.A., in, 170-71, 172-5
- Electorate, Cabinet Ministers and, 220; Executive and, 254-6; Great Britain, total in, 169-70; legislature and, 184-5; political sovereign, as, 5-6, 221, 229
- Elgin, Lord, Governor-General in Canada, 223-4
- Elizabeth, Queen, ecclesiastical supremacy of, 29; growth of Constitution, and, 133
- Emperor, German, 70, 118, 213, 231-2; Holy Roman, 23-7; Japan, of, 198-9; Roman, 20-22; Russian, 21, 213, 327, 328
- Employers' Associations, Italian Corporative State and, 323
- Encyclopædia Britannica*, Article on "League of Nations," in, 329
- England; see Great Britain
- Episcopate, in Britain, 191, 192
- Erasmus, D., international ideals of, 327
- Erastianism, of James I of England, 29
- Estonia, Initiative (Popular) in, 291, 293; legislature in, 66, 288, 291; P.R. in, 179; Referendum in, 288, 293; sovereign state, created, 47; uni-cameral system in, 187
- Ethics, defined, 1
- Executive, apparent and real, 212-14; Australia, in, 112; civil service, and, 8, 213; defined, 8; diffusion of power of, 237; electorate and, 254-6; France, in, 150; Germany, in, 209, 213, 230-32, 256; Great Britain, in, 69, 215-22; growth of democracy and, 212; Irish Free State and, 155; Italy, and, 70, 143;

- judiciary, and, 71-2; Latin America, in, 216, 256; League of Nations, of, 334; legislature, compared with, 8; non-parliamentary, 68-71, 237; parliamentary, 47, 68-71, 216; police and, 213; powers of, 9, 212-13; Self-Governing Dominions, in, 222-6; Separation of Powers, and, 214-16; Russia, in, 213; Switzerland, in, 110, 208-9; types of, 68-71, 213; U.S.A., in, 104-5, 159, 203, 216
- Factory System, established, 41
- Family, as unit of association within state, 3
- Far East, popular institutions in, 45-6, 199
- Fascisti, in Italy, 70, 142, 196, 247-52, 316-18, 344
- Fathers of American Constitution, 38, 63, 215, 239, 242
- Federal Assembly, in Switzerland; see under Assembly
- Federalism, Australia, in, 98, 101, 349; British Empire, absent in, 83; Canada, in, 100-101, 197; constitutionalism, future of, and, 346-52; Germany, in, 98-9, 102, 117-20, 209; Greece, Ancient, in, 98; Italy, and, 93-4, 98; Jugo-Slavia, and, 95-6; Latin America, in, 120-22; Mexico, in, 98; minorities and, 285; Second Chambers and, 189, 210; Switzerland, in, 98, 99, 102, 107-10; U.S.A., in, 38, 98, 99, 100, 101, 102, 103-107, 349
- Federal State, characteristics of, 61, 98-100; constitution of, 125-30; constitutional amendment in, 130, 146, 147, 148; defined, 60; examples of, 61; unitary, compared with, 60-63; variations in types of, 100-103
- Feudalism, England, in, 133; Germany, in, 117, 152; Middle Ages, universal in Europe, in, 23-4
- Fichte, J. G., and Social Contract Theory, 37
- Finland, Baltic States, and, 145; Cabinet in, 235; Constitution of, 131, 143, 234-5; judiciary in, 235, 265; legislature in, 66, 143, 235; P.R. in, 235; President in, 235; Presidential Electors in, 235; Second Ballot, 235; Russia and, 143, 235; sovereign state, created, 47; Suffrage in, 235; uni-cameral system in, 187; U.S.A., compared with, 235
- Florence, Supreme Court in, 265
- France, Administrative Law (*Droit Administratif*) in, 71-2, 269-71; Alsace-Lorraine and, 44, 46, 283-4; Austria, compared with, 233; Bonaparte family in, 150, 227; Boulanger crisis in, 227; Bourbon family in, 40, 150, 227; Bryce on, 150; Cabinet in, 69, 206, 216, 226-30, 244, 255; Canada, compared with, 113; Chamber of Deputies in, 150, 205-6, 227-8; Charter, of Louis XVIII, in, 125; coalitions in, 228-9; collectivism in, 272; colonies of, 205-6; constituency in, 67; Constitution of, 65, 128, 146, 148-51, 205, 227, 259, 345; constitutional amendment in, 147-51; constitutionalism in, 343; Council of State in, 227, 270; electoral colleges in, 205; Enlightened Despotism in, 29; executive in, 150; fundamental law in, 146; general election in, 229; Germany, compared with, 230-1; Great Britain, compared with, 216, 222, 228-9; India, power of, in, 301; Italy, compared with, 250; judiciary in, 150, 260-76; League of Nations and, 331; local government in, 62-3, 92-3, 205-6; Louis XIV and, 92; Louis Napoleon (Napoleon III) and, 41, 147, 282; military service in, 205; monarchy in, 29, 226-7; Napoleon I and, 262, 270, 271, 282; National Assembly in, 149, 205, 227, 265; nationalism, beginnings of, in, 25, 27; Orleans, family of, in, 150; plebiscite in, 92, 147, 227, 229, 282-3; political groups in, 176, 228-9; P.R. in, 175-7, 180; President in, 5, 150-1, 206, 226-9, 265; Recall in, 291; Regionalism in, 92-3; Renaissance in, 27; Republicans in,

- 149-50; Republics (early) in, 125; Revolutions in, 38-41, 92, 197, 147, 164, 166-7, 187-8, 216, 227; Royalists in, 149-50, 227; *Scrutin d'arrondissement* in, 176-7; *Scrutin de liste* in, 176-7, 206; Second Ballot in, 179, 206; Second Empire in, 41, 271; Senate in, 68, 150-51, 205-6, 227-9; state integration of, 79; suffrage in, 166-7; Switzerland, compared with, 244, 246; Syndicalists in, 311; Syria, mandate of, 300; Thiers and, 149-50, 226; Third Republic in, 44, 146, 148-51, 226-7, 229; Turkey, compared with, 253; unicameral system in, 187-8; unitary state of, 60, 91-3; U.S.A., compared with, 282-3
- Franchise, see Suffrage
- Garibaldi, G., and Italian Unity, 93, 94
- General Strike, England, in (1926), 314, footnote; Italy, in, 248
- General Warrant, constitutional rights and, 267
- Geneva, canton of, 290; seat of League of Nations, 331
- Gentile Commission, in Italy, 317-18
- George I and II, and Cabinet, 218
- George III, autocracy and, 31; Cabinet and, 219; executive, interferes with, 69; Wilkes Case and, 267
- George, D. Ll., Budget of 1909, 135; Election of 1918, and, 254
- Germanic and Scandinavian Group of States in International Court, 334
- Germany, Administrative Law in, 271; Allenstein and, 284; Australia, compared with, 119, 120, 207; Austria, and, 117, 233; Bavaria and, 120; Belgium and, 78; Bismarck in, 43-4; Bundesrat, 118, 152, 209, 271; Cabinet in, 230-32; Canada, compared with, 120; Chancellor, Federal, in, 231-2; Chancellor, Imperial, in, 70, 230-32; Constitution of Empire, 44, 117, 118, 125, 171, 230-32, 271; Constitution of Republic, 117-20, 151-2, 171-2, 209, 230-32, 271, 312-15; constitutional amendment in, 147, 151-2, 288, 295; constitutionalism in, 46, 342; democracy in, 231; Economic Councils in, 312-15, 318, 348; educational conditions in, 183; electoral system in, 171-2; Emperor in, 23-7, 70, 118, 213, 231-2; executive in, 70, 209, 230-32, 256; federalism in, 61, 98-9, 102, 117-20, 152, 209; France, compared with, 230-1, 233; Germanic Confederation in, 98, 117; Great War and, 47, 70, 117-18, 151-2, 179, 230, 314; Holy Roman Empire and, 25, 27, 47; Initiative (Popular) in, 185, 291; Italy, compared with, 250; judiciary in Empire, 118; judiciary in Republic, 119-20, 231, 264; League of Nations and, 330-32; legislature in, 182, 272; minor states in, 152; monarchy in, 151-2; Napoleon and, 40, 198; nationals of, outside, 284-5; non-German elements in, 44, 46; political groups in, 182; P.R. in, 179, 182; President in, 120, 209, 230-32, 283, 288; President Wilson and, 70, 230; Prussia and, 117, 119-20, 152; Referendum in, 147, 152, 209-10; Reichsrat in, 119, 152, 189, 207, 209-10; Reichstag in Empire, 118, 152, 288; Reichstag in Republic, 119, 152, 172, 207, 209-10, 230-32, 288, 291; Renaissance in, 27; representative system in, 185; "reserve of powers" in, 119-20; revolution in, 230, 314-15; Southern Silesia and, 284; suffrage in, 172, 230, 232; Switzerland, compared with, 120, 207-208; U.S.A., compared with, 119, 120; voting age in, 167
- Gerson, J., and the Conciliar Movement, 26
- Gibraltar, Crown Colony, as, 305
- Giolitti, G., Prime Minister of Italy, 247
- Gladstone, W. E., Egypt and, 300; Home Rule and, 89; Reform Acts of, 133
- Government, defined, 6-7; society and, 127; three departments of, 7
- Government of India Act, of 1919, 302-304

- Governor-General, Australia, in, 112, 116, 156, 204; Canada, in, 115-16, 196-7, 223-4; India, in, 301-304; Irish Free State in, 155; Responsible Government and, 222-6; South Africa, in, 91, 200
- Governors, Australian States, in, 113, 115, 156; Crown Colonies, in, 305-6; Indian Provinces, in, 302-3
- Grand Remonstrance, and responsibility of ministers, 218
- Great Britain, American Colonies of, 158-9; bye-elections in, 229; Cabinet in, 69, 216-22, 226-30, 254-5; Canada, compared with, 113; Collectivism in, 272; commentaries on Constitution of, 215; constituency in, 67; Constitution of, 63-4, 125-6, 128, 130-38, 147, 215, 345; constitutionalism in, 27, 29-34, 342-3; Convocation in, 191; Cromwell, under, 187; democracy in, 164; Devolution and, 347; electoral system in, 41, 42, 168-70, 175; electorate in, 5-6, 169-70, 221, 229; executive in, 69, 215; France, compared with, 216, 222, 228-9; General Strike (of 1926) in, 314, footnote; Great Council in, 162; Hanover and, 78; House of Commons in, 42, 133, 137, 162, 172-4, 180, 228-9; House of Lords in, 41, 63, 64, 68, 89, 133-138, 147, 189-95, 260-61, 294; Italy, compared with, 141, 250, 323; judiciary in, 9, 71, 72, 260-76; League of Nations and, 330; legislation in, 105, 162, 346; local government in, 60, 62; monarchy in, 132; nationalism, growth of, in, 24-5; Palestine, mandate, of, 300; parties in, 173-4, 182; P.R. in, 178, 180, 182; Referendum suggested in, 294; Renaissance and, 27; representation in, 172-5; Rule of Law in, 32-3, 72, 266-9, 271-6; Self-Governing Dominions, relation of, to, 83, 85, 222-6; Separation of Powers and, 69, 215-16; single-member constituency in, 172-4; sovereign in, 5-6; Spain, compared with, 199; state integration in, 79; suffrage in, 66, 135, 167-70; Tocqueville, de, and Constitution of, 124; Trade Unionism in, 317; Turkey, compared with, 253; unitary state of, 60, 82-7; voting age in, 167; Woman Suffrage campaign in, 169
- Greece, Ancient, Confederacy of Delos in, 17; constitutionalism in, 15-17; democracy in, 163, 286; slavery in, 16
- Greece, Modern, Constitution of (1864), 44; constitutionalism and, 342; dictatorship in, 298; independence established, 44; P.R. in, 179; suffrage in, 166
- Groups, Political, France in, 176, 228-9; Germany, in, 182
- Guild, in Italy; see Syndicate
- Habeas Corpus Act: political importance of, 32; Rule of Law and, 276
- Haiti, and League of Nations, 338
- Hanover, and Britain, 78
- Hanoverian Succession, and Cabinet, 218
- Hare, T., inventor of P.R., 177-8
- Hegel, G. W. F., and Social Contract Theory, 37
- Henry VI, deposition of, 30; Parliament and, 134; Privy Council and, 217
- Henry VII, Ireland, and, 84; Tudor Despotism and, 30
- Henry VIII, ecclesiastical supremacy of, 29
- Henry of Navarre, international ideals of, 327
- Heptarchy, in England, 83
- Hetherington, Prof. H. J. W., defines state, 4
- High Commissioner, in Canada, 225
- Historical Method, and Social Contract theory, 38
- Hobbes, T., *Leviathan*, 35, 36
- Holland, see Netherlands
- Holmes, Judge, on law-making of judges, 262
- Holy Alliance, and internationalism, 327
- Holy Roman Empire, Charles the Great and, 23, 117; Emperor in, 23-27; Germany and, 117; loosening of hold in West, 23
- Home Rule, "All-Round," in

- Britain, 347; India and, 304;
 Irish, 89
 Home Secretary, and Wilkes case,
 267
 Honours List, and creation of
 peers, 192
 Hoover, President, election of,
 241-2
 House of Assembly, in South
 Africa, 225
 House of Commons, in Great
 Britain, Bills under Parliament
 Act, and, 137; Cabinet, and,
 219-22, 254; Civil Service,
 and, 220; democracy and, 164;
 Edward III, under, 190; estab-
 lishment of, 133; generally, 42,
 133, 137, 172-4, 180, 228-9,
 237-8; Industrial Revolution,
 and, 42; Lords, and, 133, 135,
 193; Magna Carta, and, 32;
 Money Bills, and, 137; Peers in,
 191-2; Pitt, the Younger, in,
 193; P.R., and, 180; representa-
 tion in, 172-4; summoned by
 Sheriffs, 190; Treaty of Utrecht,
 and, 192
 House of Lords, in Great Britain,
 Canadian Senate, compared with,
 197; Commons, and, 133, 135,
 193, 237-8; composition and
 powers of, 63, 64, 189-95;
 Cromwell, under, 187-91;
 Edward III, under, 190; Final
 Court of Appeal, as, 193-4, 260;
 Home Rule Act and, 89; Indus-
 trial Revolution, effect of, on,
 42; Irish Free State and, 192;
 Irish Peers in, 192; Lord Chan-
 cellor and, 260; "natural selec-
 tion" and, 194; non-elective
 Second Chamber, as, 68, 189;
 numbers in, 194; Parliament Act
 and, 135, 137-8, 192-4; reform
 of, 47, 193-5, 210, 294; Reform
 Bill (1832) and, 193; Scottish
 Peers in, 191-2; Spanish Senate,
 compared with, 199; Treaty of
 Utrecht and, 192
 House of Peers, in Japan, 68, 189,
 198-9
 House of Representatives, Aus-
 tralia, in, 112, 156, 168, 204,
 224; Japan, in, 199; New
 Zealand, in, 88; U.S.A., in, 70,
 104, 159, 170-1, 173-5, 203,
 240-3
 Huguenots, and Social Contract
 Theory, 34-5
 Humboldt, W. von., and govern-
 ment, 309
 Hume, D., and public opinion,
 77
 Hungary, Austria and, 44, 78;
 open voting in, 168; P.R. in,
 179; Table of Magnates in, 190
 Illiteracy, Europe, in, 183; India,
 in, 303
 Impeachment, in U.S.A., 71
 Imperial Conferences, and Empire
 unity, 87, 225-6
 Imperial Parliament, and Self-
 Governing Dominions, 85-6, 115,
 139, 153-4, 222-6
 India, Act of 1919, 302-4; British
 power in, 301-2; French power
 in, 301; Governor-General in,
 301-4; illiteracy in, 303; legis-
 lative councils in, 178, 302-3;
 P.R. in, 178
 India Office, beginnings of, 301
 Indian Mutiny, and India Act, 301
 Individualism, Benthamite, 309-10
 Initiative (Popular), arguments for
 and against, 292-5; constitu-
 tionalism, future of, and, 345;
 direct democratic checks, other,
 and, 281, 285-6; Estonia, in,
 291, 293; Germany, in, 185,
 291; Switzerland, in, 157, 185,
 289-90, 292; U.S.A., in, 185,
 289-91
 "International," of Karl Marx,
 etc., 351-2
 International Labour Bureau, of
 League of Nations, 337
 Investiture Contest, between Pope
 and Emperor, 25
 Ireland, Church Disestablishment
 in, 105; Devolution and, 347;
 Dominion Home Rule, and, 89-
 90; Imperial Parliament and,
 89; land laws in, 105; political
 future of, 90; political problems
 in, 89-90; P.R., in, 178; Union
 of Great Britain with, 84-5, 135
 Irish Free State, Cabinet in, 225;
 Canada, compared with, 225;
 Constitution of, 86, 89-90, 139,
 155, 225; constitutional amend-
 ment in, 155; creation of, 85,
 155; Dail Eireann (Chamber of
 Deputies) in, 155, 206-7, 225;

- Dominion Status and, 86; Economic Councils in, 312, 348; executive in, 155; Executive Council in, 155, 225; Governor-General in, 155; House of Lords and, 192; legislature in, 155, 207; New Zealand, compared with, 140; P.R. in, 178, 206; Prime Minister (President of Executive Council) in, 207, 225; Referendum in, 147; Responsible Government in, 225; Self-Governing Dominions, compared with other, 86, 140, 154, 155; Senate in, 68, 155, 206-7, 312; Ulster, and, 89, 155; unitary state of, 88-90
- Irish Party, in Commons, 221
- Irish Question, failure to settle, 89; "Home Rule All Round," and, 347
- Italia Irredenta*, 44, 46, 94, 283
- Italy, Administrative Law in, 271; Australia, compared with, 323; Austrians in, 284; Cabinet in, 247-52, 254, 256; Canada, compared with, 94; Catholic Church in, 142; Chamber of Deputies in, 196, 247-52, 321-2; constituency in, 67, 171, 181; Constitution of, 41, 64-5, 73-4, 128, 131, 141-3, 195-6, 247-51, 316, 319, 342; Corporative State in, 316-24; dictatorship in, 251-2, 298; *Duce* in, 249-50; electoral laws in, 142, 251, 265, 321-2; executive in, 70, 143; Fascist Grand Council in, 250, 321-3; Fascist régime in, 70, 142, 239, 247-52, 316-24; France, compared with, 250; General Strike in, 248; Germany, compared with, 250; Giolitti Ministry in, 247; Great Britain, compared with, 94, 141, 250, 321-23; Great War and, 94, 142-3; Holy Roman Empire in, 25, 27; illiteracy in, 183; *Italia Irredenta* and, 44, 46, 94, 283; judiciary in, 142, 265; Jugo-Slavia, compared with, 95; League of Nations and, 331; legislature in, 141-2, 247-52, 265, 317; Liberal Democracy in, 318, 322; Liberal reformers in, 165; Machiavelli and, 28; mediæval cities of, 98, 164, 319; Mussolini and, 70, 93, 142, 248-52, 316-24; Napoleon and, 40; New Zealand, compared with, 323; Pope, power of, in, 142; Prime Minister in, 316-18; Renaissance in, 27; Revolution of 1848 in, 93-4; Roman Empire and, 93; Russia, compared with, 316-18; Senate in, 68, 195-6, 247-52, 312, 322; Spain, compared with, 251; suffrage in, 166; Syndicalist movement in, 248-9, 317; Triple Alliance and, 78; Unification of, 28, 41, 43, 93-4, 247; unitary state of, 60, 93-4; U.S.A., compared with, 94, 243, 251; voting age in, 168
- Jacobite Rebellion, of 1715, 138
- James I, Erastianism of, 29; Parliament and, 31, 134
- James II, dethroned, 35, 361, 134; Parliament and, 31; Protestant Succession and, 218
- Japan, Constitution of, 167, 198, 299; constitutionalism in, 45, 342; electoral reform in, 167; Emperor of, 198-9; House of Peers in, 68, 189, 198-9; House of Representatives in, 199; League of Nations and, 331; P.R. in, 179; prefecture in, 199; suffrage in, 167; voting in, 66; voting age in, 168
- Jenks, Prof. E., and a basis of classification of constitutions, 59
- Jews, admission to Parliament, 105; Theocracy, and, 58
- John, King, and Magna Carta, 133
- Joint-Session, of two Houses of Parliament, 147, 148, 149, 150-1, 155, 205, 208, 227, 233-4
- Judiciary, Administrative Law, and, 269-76; Australia, in, 102, 112, 264; Belgium, in, 265; Canada, in, 102, 116; defined, 9; executive and, 71-2, 213, 258-61; federal states, in, 101-3; Finland, in, 235, 265; France, 150, 260-76; German Empire, 118, 231, German Republic, 119, 120, 264; Great Britain, 9, 71, 72, 260-76; Great Council and, 213; independence of, 258-61; Italy, in, 142, 265; League of Nations, of, 334; legislature and, 261-6; New Zealand, in, 265; Norway,

- in, 265; public opinion and, 128; Rule of Law and, 266-9, 271-6; Rumania, in, 265; Switzerland, in, 102, 110, 260, 264; types of, 71-2; U.S.A., in, 9, 102, 103, 105, 109, 110, 159, 260-76
- Jugo-Slavia, Bulgaria, and, 95; cabinet in, 233; constitution of, 233; Italy, compared with, 95; Klagenfurt, and, 284; P.R. in, 179; provinces of, 95; Russians in, 285; Serbs, Croats and Slovenes in, 79; Servia and, 47, 233; suffrage in, 166, 171; uni-cameral system in, 187; unitary state, 95-6
- Julius Cæsar, 20, 22
- Jurisprudence, Common Law States, in, 275; politics and, 258
- Justices of the Peace, under Tudors in England, 30-1
- Justinian, Emperor, *Institutes and Digest*, 20-22
- Kaiser; see Wilhelm II
- Kant, E., classification of constitutions of, 57; international ideals of, 327; Social Contract Theory, and, 37
- Khedive, family of, in Egypt, 300
- King, Egypt, in, 300; Great Britain, in, 5, 136-7; Italy, in, 248; Jugo-Slavia, in, 233; Prussia, in, 21, 118
- Klagenfurt, and Plebiscite, 284
- Kropotkin, Prince, as philosophical anarchist, 12
- Labour, Governments in Britain, 136-7, 221; Party, and Asquith, 221
- Laissez-faire*, and Collectivism, 309-10
- Lancastrians, Parliament, and, 30, 133-4; usurpation by, 30
- Languages, South Africa, in, 155; Switzerland, in, 108
- Landsting*, in Denmark, 179
- Laski, Prof. H. J., Senate, in U.S.A., on, 203; Separation of Powers, on, 259
- Latin America, Bryce on, 120-1; constitutional amendment in, 148; constitutionalism, and, 45; democracy in, 120; economic resources of, 122; executive in, 216, 256; factious military leaders in, 11; federalism in, 120-22; Rule of Law in, 72, 268; Spain and Portugal, and, 120; U.S.A., and, 121, 216, 238
- Latin Group of States, in International Court, 334
- Latvia, League of Nations and, 338; legislature in, 66; P.R. in, 179; sovereign state, as, 47; uni-cameral system in, 187
- Law, Administrative, 71-2, 258, 269-76; branches of, 127-8; Case, or Judge-made, 5, 127-8, 261-6; Common, 72, 127, 133, 263, 274; Constitutional, 64, 128-9, 131, 132, 136-8, 160, 217; custom, compared with, 4-5, 126-8; defined, 4-5; federal states, in, 264; fundamental, 10, 146; Greek conception of, 16; province of experts, as, 9; Roman, influence of, 22; statute, 127, 160, 263
- Law Lords (Lords of Appeal in Ordinary), 192, 260
- League of Nations, Article 16 of Covenant of, 335-6; Assembly of, 330-32, 334-5, 337, 339; British Dominions and, 87; conceptions behind, 329-30; Constitution of, 326-40, 349-50; Council of, 331-3, 334-9; Covenant of, 330-37, 351; Great War and, 47-8; International Labour Bureau of, 337; mandate system under, 300, 336; membership of, 330-1, 338; minorities and, 285; Permanent Court of International Justice of, 329, 333-7; Protocol on Permanent Court, 334; Secretariat of, 333-4, 338; Secretary-General of, 331, 335; Sovereignty and, 339-40; work of, 334-6
- Legislation, England, in, 162; executive and, 213; France, in, 151; modern democracy and, 212; public opinion and, 128; statute law and, 127; U.S.A., in, compared with British, 105; U.S. Senate, in, 203
- Legislature, Australia, in, 112, 156; Austrian Republic, in, 233; Belgium, in, 131; Canada, in, 153-4, 196, 224; constitutional state, in, 130; Czecho-Slovakia, in, 182,

- 234; defined, 7-8; division of, 66-8; executive, compared with, 8; federal state, in, 147; Finland, in, 143; flexible constitution, under, 130-1; France, in, 147, 150-1; German Empire, in, 118; German Republic, in, 182, 209-10, 230-32; good government, and, 184-5; Great Britain, in, 130, 162, 173-4; India, in, 178; Irish Free State, in, 155, 207; Italy, in, 141-2; law and, 127; League of Nations, of, 334; New Zealand, of, 140-41; Poland, in, 234; P.R., under, 181-2; restrictions on, 145-8; rigid constitution, under, 130-1; Rumania, in, 131, 233-4; Separation of Powers, and, 214-16; South Africa, in, 147, 200-1; Spain, in, 200; Switzerland, in, 108, 157, 208-9; types of, 65-6; U.S.A., in, 104, 105, 131, 158, 159, 173-5
- Leipzig, Battle of, 40
- Lenin, V., Communist régime in Russia, and, 311; *coup d'état* of, 315
- Liberal Administration, of Asquith, 221
- Liberalism, political, Austria, in, 165; growth of, 39-43; Italy, in, 165, 247; modern world, in, 12; Russia, in, 165; suffrage and, 165
- Liberty, religious and political, 164; Separation of Powers and, 215
- Lieutenant-Governors, in Canada, 115
- Lincoln, Abraham, American Union, and, 106-7; election of, 241
- Lithuania, legislature in, 66; P.R. in, 179; sovereign state, created, 47; uni-cameral system in, 187
- Local Government, Belgium, in, 179; Canada, in, 115; France, in, 62-3, 92-3; Germany, in, 172; Great Britain, in, 60, 168; Japan, in, 199; provincial government, compared with, 115, 154; state government, compared with, 81-2; U.S.A., in, 63
- Locke, J., *Treatises of Civil Government*, 35-6
- Lodger Vote, in Britain, 165, 169
- London County Council, and Parliament, 82
- Lord Chancellor, Chairman of House of Lords as, 259-60; judges, appointment of, and, 261
- Louis XIV, and the French state, 92
- Louis XVIII, and the French Charter, 125
- Louis Philippe, French Charter, and, 125; Revolution of 1830, and, 40-41
- Lowell, A. L., Administrative Law, on, 270; *Government of England*, 130
- Luther, Martin, political importance of, 28-9
- Macaulay, Lord, on Cabinet, 217-18
- MacDonald, J. R., Labour Administrations of, 136
- Macedon, Philip and Alexander of, 17
- Machiavelli, N., *The Prince*, 28
- Maciver, Prof. R. M., defines state, 3
- McMahon, President, and dissolution of French Chambers, 229
- Magistracy of Labour, in Italy, 320
- Magna Carta, Common Council, and, 190; King John and, 133; "Palladium of British Liberty," 132; product of a feudal age, 32; Rule of Law, and, 267
- Magyars, in Rumania, 284
- Maine, Sir H., on French President, 226, 231
- Maine (State), U.S.A., and Presidential Election, 241
- Maitland, F. W., on constitutional epochs, 133
- Majority, special, for constitutional amendment, 146-7
- Malta, P.R. in, 178
- Manchester, in General Elections of 1923 and 1924, 174
- Manchu Dynasty, overthrow of, 299
- Mandate System, under League of Nations, 300, 336
- Maoris, and New Zealand government, 87-8
- Marriott, Sir J. A. R., and a basis of classification of constitutions, 59
- Marsiglio of Padua, and the Concliar Movement, 26
- Marx, Karl, Bolsheviks, disciples of, 47; *Communist Manifesto* of, 43; doctrine of, and class war, 45; "International" of, 351-2
- Mary, Queen, and William III, 36

- Masaryk, J., as President of Czechoslovakia, 234
- Maximilian, Prince, of Baden, as German Imperial Chancellor, 230
- Mazzini, G., and Italian Unity, 93
- Mercantile System, and economic organization of state, 308-10
- Metternich, Prince, Concert of Europe, and, 327; Italy, and, 93
- Mexico, compulsory voting in, 168; federalism in, 98, 121
- Middle Ages, constitutionalism in, 23-27; democratic politics in, 164; Roman influence on, 22; Social Contract theory in, 34
- Middle Class, Aristotle and, 56; Great Britain, enfranchised in, 41-2
- Military Service, Australia, in, 289; France, in, 205
- Mill, J. S., equal voting, on, 183; *Representative Government*, 177
- Millerand, A., French President, and executive, 69
- Minister of Justice, Cabinets, Continental, in, 260; France, in, 270
- Minorities, Austria, in, 165; France, in, 176; P.R., under, 180-1, 285; Treaties ending Great War, and, 180, 284-5
- Mogul Empire, break up of, in India, 301
- Monarchy, Aristotle on, 55, 56; delegation of powers of, 214; France, in, 29, 226, 227; Germany, in, 151-2; Great Britain, in, 18, 132; modern state, in, 57-8, 69; Montesquieu, on, 57; post-War Europe, in, 233; Separation of Powers and, 215, 217
- Montagu, E., Secretary of State for India, 302
- Montenegro, independence established, 44
- Montesquieu, C. de S., classification of governments, on, 57; Separation of Powers, on, 215, 219
- Montfort, Simon de, and Parliament, 133
- Moors, in Spain, 25
- Municipal Reform, in Britain, 105
- Mussolini, B., Cabinet in Italy, and, 248-52; career of, 317; Constitution of Italy and, 65, 142; Fascist régime and, 70, 317; sovereignty and, 344
- Mustapha Kemal, President of Turkish Republic, 253-4
- Mutiny Act, in Britain, and Annual Supplies, 32
- Naples, Supreme Court in, 265
- Napoleon I., Administrative Law under, 270, 271; democracy and, 352; French Code and, 262; Germanic Confederation and, 98, 117; Italy and, 93; nationalism, effect of on, 39-40; Plebiscite and, 282; Switzerland and, 107
- Napoleon, Louis (Napoleon III), Plebiscite and, 147, 282; Second Empire and, 41; Sedan, effect of surrender at, 149
- Natal, as province in Union of South Africa, 90
- National Assembly, in France, see under Assembly
- National Insurance Act, of 1911, 272-3
- Nationalism, Balkans, in, 44-5; Bismarck and, 43-4; Bohemia, in, 352; China, in, 46; constitutionalism and, 11, 351-2; economic protection and, 42; Egypt in, 300; Great War and, 47; Karl Marx and, 43; Liberal Reform and, 40; Mussolini and, 93; Napoleon and, 39-40; Poland, in, 352; Renaissance and, 40; separatism and, 58; Switzerland, in, 109; Western Europe, in, 24-26
- Nationalrat, in Austria, 233-4
- Netherlands, Constitution of, 190; constitutionalism in, 342; P.R. in, 179; Revolution of 1830 and, 41; Second Chamber in, 190; Social Contract Theory and, 34, 35
- New England States (U.S.A.), in Congressional Election of 1924, 174
- Newfoundland, first British Colony, 114; self-government in, 87; status of, 139
- New South Wales, Canberra and, 113; Responsible Government granted to, 224
- New York State, American Union and, 338; Presidential election in, 240-1; Senatorial elections in, 202
- New Zealand, Australian Common-

- wealth and, 88, 140; Canada, compared with, 113, 140-1; Constitution of, 88, 131, 139-41, 298; Irish Free State, compared with, 86, 140; Italy, compared with, 323; judiciary in, 265; legislature in, 140-1; Maoris in, 87-8; Prohibition in, 288; provincial system in, 88, 139, 140; Referendum in, 288; Responsible Government granted to, 224; South Africa, compared with, 140; Unitary state of, 87-8, 140
- Nicholas of Cues, and Conciliar Movement, 26
- Norman Conquest of England, Great Council and, 190; government following, 133; unification of Britain, and, 84
- Norsemen, England invaded by, 83; feudalism and, 23
- Northern Ireland, Great Britain and, 85; House of Lords and, 192; Irish Free State and, 89, 155; P.R. in, 178, 180
- North's Regulating Act, and government of India, 301
- Norway, Constitution of, 78; constitutionalism in, 342; judiciary in, 265; P.R. in, 179; Referendum suggested in, 294; Sweden, united with, 78; voting age in, 167-8
- Old Colonial System, Governor-General under, 222-4
- Oligarchy, Aristotle, according to, 56; democracy and, 164
- Orange River Colony, as Province of Union of South Africa, 90
- Orders in Council, applicable to Crown Colonies, 306
- Oregon State (U.S.A.), direct democratic checks in, 288, 291
- Orleans, dynasty of, in France, 150, 227
- Pacific, Great Powers in, 111
- Pact, Corfu, of, and Jugo-Slavs, 95; Kellogg, and League of Nations, 338
- Paine, T., and government, 309
- Palermo, Supreme Court in, 265
- Palestine, British Mandate in, 305
- Palmerston, Lord, as Irish Peer in House of Commons, 192
- Paris, captured by Germans, 149; French political centralism and, 92; Treaties signed at, 203
- Parliament, Canada, in, 153-4; flexible constitution, under, 129; France, in, 150; Great Britain, in, Cabinet and, 218-22; Great Council and, 217; growth of, 25, 30-34, 133, 162, 190; life of, 63, 138, 229; "Model," 30, 133, 190; Revolution of 1688 and, 32; Simon de Montfort's, 133; sovereignty of, 6, 85-6, 130, 262-76; Stuarts in conflict with, 31-2; supremacy of, 138; Tudors and, 30-1, 134; Italy, in, 247-52, 265, 317; South Africa, in, 225
- Parliament Act, dissolution of Parliament and, 147; Home Rule and, 89; King's signature and, 137; Law of the Constitution, 63, 126, 135, 137; life of Parliament, and, 138; Lords, powers of, and, 193-4; Money Bills and, 137-8; passage of, 135; Peers, creation of, and, 192; Referendum and, 147; Welsh Disestablishment and, 138
- Parliament of Industry, Economic Council in Germany as, 313
- Parliamentary Reform, in Britain, 105
- Parties, Political, Collectivism and, 310; Great Britain, in, 173-4, 182, 193, 219-22; U.S.A., in, 174-5, 182
- Payment of Members, in modern state, 184
- Pedro II, of Portugal, Emperor of Brazil, 121
- Peers, Commons, in, 191-2; creation of, 192, 194; Irish, 192; Law (Lords of Appeal), 192; Scottish, 191-2; Spiritual, 192
- Pennsylvania State, in Congressional Election of 1924, 174
- Permanent Court of International Justice, under League of Nations, 329, 333-7
- Persia, Egypt, compared with, 299; representative assembly in, 299
- Petition of Right, law of the Constitution, 32; Rule of Law and, 267
- Philippine Islands, American administration of, 300
- Pitt, W. (the Younger), Canadian

- Act of, 196; India Act of, 301; Prime Minister, as, 193
- Place Act (1707), and Office Holders, 220
- Plato, ideal constitution of, 16; *Republic*, 17, 34, 55; *Statesman* (*Politicus*), 55
- Plebiscite, direct democratic checks, other, and, 281, 285-6; France, in, 92, 147, 227, 229, 282; minorities and, 283-5; Presidential Election and, 282-3
- Poland, Cabinet in, 232-4, 236; Constitution of, 125, 234; constitutionalism and, 342; Germans in, 284; legislature in, 234; military dictatorship in, 234, 293; nationalism in, 47, 352; P.R. in, 179; President in, 234; Russians in, 285; Self-determination and, 283; Southern Silesia and, 284
- Police, included in executive, 213
- Political Philosophy, basis of, 14; Conciliar Movement and, 26-7
- Political Science, defined, 1-2
- Polybius, on Roman Constitution, 20
- Poor Law, amendment, 105
- Pope, Investiture Contest, and, 25; Italy, modern, in, 142; Middle Ages, during, 23-4
- Popular Initiative; see Initiative (Popular)
- Portugal, Latin America, and, 120, 121; Revolution of 1911 in, 190; Second Chamber in, 190; suffrage in, 166
- Prefect, in France, 62, 92
- Prerogative States, Administrative Law in, 71-2, 258, 269-76
- President, Austria, in, 233-4; Czecho-Slovakia, in, 234; Executive Council, of, in Irish Free State, 225; Finland, in, 235; France, in, 5, 150-1, 206, 226-9, 230-1, 265, 282-3; Germany, in, 120, 209, 230-2, 283, 288; Government of, compared with Cabinet, 237-9, 254-6; nominal executive, as, 213-14; Poland, in, 234; Turkey, in, 70, 253-4; U.S.A., in, 8, 70-71, 104-5, 170-1, 203, 226, 239-44, 255, 260, 282-3
- Presidential Electors, Finland, in, 235; U.S.A., in, 64, 170-1, 240-2
- Prime Minister, Czecho-Slovakia, in, 234; France, in, 226-9; Great Britain, in, 218-22, 254-6, 267; Irish Free State, in, 207, 225; Italy, in, 249-50, 316
- Prince Imperial, death of, and French monarchists, 227
- Privy Council, Australia and, 112; Cabinet, evolution of, and, 217-22; Canada, and, 116, 140; Canada, of, 224; Dicey on, 116; Henry VI, under, 217; Imperial Final Court, as, 112, 116; membership of, 220
- Progress, Comte defines, 127
- Prohibition, Australia, in, 289; New Zealand, in, 288; U.S.A., in, 160
- Proletariat, Italian Corporative State and, 318; Russia in, 315
- Proportional Representation (P.R.), arguments for and against, 180-82; Belgium, in, 179, 181-2; Cabinet-forming under, 181-2; Continental states, in, 179; Czecho-Slovakia, in, 182; English-speaking countries, in, 177, 180; Finland, in, 235; France, in, 175-7, 180; Germany, in, 179, 182; Great Britain, suggested in, 180, 182; Hare, T., invents, 177-8; Italy, in, 178, 181; legislatures and, 181-2; Mill, J. S., supports, 177; minorities and, 285; multi-member constituency and, 175-80; object of, 67; Second Ballot and, 179; single-member constituency and, 177-9; single transferable vote and, 177-8, 179; Sweden, government stability in, under, 179, 182; Treaties, ending Great War and, 180; U.S.A., in, 178, 182
- Protection, economic, and nationalism, 42
- Protectorate, British, of Egypt, 300; Cromwell's, documentary constitution under, 32; uni-cameral system during, 187
- Provinces, Austria, in, 233; Canada, in, 114, 115, 116, 153-4, 196-7; India, in, 302-3; New Zealand, in, 88, 139, 140; South Africa, in, 90, 91, 154
- Provisional Government, in Russia, 327
- Prussia, Austria, and, 117; constitu-

- tion of 1850 in, 125; Enlightened Despotism in, 29; German Empire, 117, 152; German Republic, in, 119, 120; Great War, effect of, on, 117; Holy Alliance and, 327; King of, 21, 118; Schleswig, and, 284
- Public Opinion, British Colonies, in, 153; Hume, D., and, 77; judiciary and, 128; legislation and, 128; Stephen, L., and, 77
- Quorum, special for constitutional amendment, 131, 146-7
- Quota, under P.R., 175-8
- Recall, of Elected Officials, arguments for and against, 292-5; constitutionalism, future of, and, 345; direct democratic checks, other, and, 281, 285-6; France, Revolutionary, in, 291; Soviet Russia, in, 292; Switzerland, in, 292; U.S.A., in, 185, 291-2, 293, 295
- Referendum, arguments for and against, 292-3; Australia, in, 147-8, 156, 287, 289, 294; constitutional amendment, for, 146-8; constitutionalism, future of, and, 345; direct democratic checks, other, and, 281, 285-6; democratic rights and, 275; Estonia, in, 288; Germany, in, 147, 152, 185, 209-10, 287-8, 293-4; Irish Free State, in, 147; New Zealand, in, 288; Southern Rhodesia, in, 91; Switzerland, in, 109, 147-8, 157, 185, 209, 286-8; U.S.A., in, 109, 148, 185, 286-8
- Reform, Acts in Britain, 41-2, 63, 135, 165, 168, 170, 192; Liberal, in Europe, 40-43
- Reformation, England, in, 31; political influence of, 28-9, 34; political rights, and, 164
- Regionalism, in France, 92-3
- Reich (Germany), Economic Council of, 312-13; German Constitution and, 209-10
- Reichsrat, in German Republic, 119, 120, 152, 189, 207-8, 209-10, 288
- Reichstag, German Empire, in, 118; German Republic, in, 119, 152, 172, 209-10, 230-2, 288, 291, 312-13
- Reign of Terror, in France, 39
- Renaissance, democracy and, 164; modern states-system and, 15; nationality and, 40; political influence of, 27-9, 34
- Representation of the People Acts, in Britain, 135, 168-70, 173
- Representation, functional (or occupational), 311-12, 322; Greek democracy, absent in, 16; nation-state, in, 11, 16; problems connected with, 183-5; Proportional, see Proportional Representation; Roman democracy, absent in, 19
- Republic, Austrian, 233-4; Chinese, 299; Czechoslovak, 234; democracy and, 164; Europe, post-War, in, 232-3; French (early), 125, 187-8, 282; French, Third, 44, 146, 148-51, 226-7, 229, 271; Italy (medieval), 319; modern conceptions of, 57-8, 69, 213; Plato's, 17; Roman, 18-23
- Republicans, in France, 149-50
- "Reserve of Powers," Australia, in, 101, 156; Canada, in, 100-1, 153; federal states (generally) in, 100-102; Germany, in, 119, 120, 230-1; Switzerland, in, 109, 110; U.S.A., in, 101, 104, 159
- Responsible Government, Durham, Lord, and, 223; Russell, Lord John, on, 224; Self-Governing Dominions, in, 70, 87, 114, 222-26
- Restoration, Cabinet, and, 218; Charles II, under, 31; Parliament and, 134; Revolution of 1688, and, 32
- Returning Officer, origin of office of, 190
- Revolutions, constitutional effect of, American, 37-8, 164, 309; England, in, Puritan, 32, 191; England in, Whig (of 1688), 31-2, 35, 134, 218, 272; French, 38-40, 107, 147, 149, 164, 166-7, 187-8, 215, 227, 291, 309; Germany, in, 230, 314-15; Industrial, 33, 41-2, 45-6, 309; Portugal, in, 190; Russia, in, 315; Turkey, in (of Young Turks), 44, 252; of 1830, 40-1; of 1848, 41
- Richard II, deposition of, and Parliament, 30
- Rights, constitution, guaranteed by, 10; "Man and of Citizen," of, 38-9; mankind, of, 167; natural,

- 34-5, 37; Rule of Law under, 274-6
- "Ripe Fruit Theory," applied to "British Colonies, 86
- Rome, City State of, 18, 21; Constitution, republican and imperial, 18-20, 22-3; democracy in, 164; Empire of, 20-22, 23, 93, 337; state integration and, 79; Supreme Court in, 265
- Rousseau, J. J., classification of constitutions, 57; French constitutions, influence on, 38; international ideals of, 327; *Social Contract*, 36-7; Sovereignty, according to, 36, 76, 286
- Royal Commission; see Commission
- Royalists, in France, 149-50
- Rule of Law, British Crown Colonies, in, 305; Colonies, in, 33; Common Law States, in, 71-2, 258, 266-9, 271-6; Great Britain, in, 32, 72, 266-9, 271-6
- Rumania, Cabinet in, 233; Constitution of, 131, 233, 298; constitutional amendment in, 131, 147; Germans in, 284; Great War, enlarged by, 47; independence of, established, 44; judiciary in, 265; legislature in, 233; Magyars in, 284; Russians in, 285; Transylvania and, 283-4
- Russell, Lord John, and Responsible Government in Canada, 224
- Russia, autocracy in, 11-12; Baltic States and, 143, 235; Bolshevik Revolution in, 11, 45, 315; bureaucracy in, 213; Communism in, 311, 315; constitutionalism and, 232, 298, 342; dictatorship in, 315, 318; disintegration of, 47; Duma in, 45; Emperor, in, 21, 213, 327, 328; Holy Alliance and, 327; Italy, compared with, 316-18; Lenin and, 311, 315; Liberal reformers in, 165; nationals of, outside, 285; non-Russian peoples in, 46; Proletariat in, 315; Provisional Government in, 326; Soviet system in, 47, 292, 315-17; Turkey, war with, 44; voting age in, 167
- St. Pierre, Abbé de, international ideals of, 327
- Salisbury, Marquis of, family of, 191, footnote
- Sankey, Lord, on Rule of Law, 273
- Sardinia, Constitution (*Statuto*), of, 41, 93-4, 125, 141-3; Supreme Court in, 265; Unification of Italy and, 41, 94
- Saxony, Luther and, 28-9
- Schism, Great, in Catholic Church, 26
- Schleswig, and Plebiscite, 284
- Scotland, Devolution and, 347; General Election of 1924 in, 174; P.R. in Election of Education Authorities in, 178, 180; Union of, with England, 84-5, 135
- Scrutin d'Arrondissement, in France, 176-7
- Scrutin de Liste, in France, 175-6, 206
- Seal, Ministers and, 137
- Second Ballot, Australia in, and transferable vote, 179; Finland in, 235; France, in, 179, 206; Great Britain, suggested in, 180
- Second Chamber, Australia, in, 201, 203-4; Austria-Hungary, in, 190; bi-cameral system and, 185-9; Canada, in, 196-8; constitutionalism, future of, and, 344-5; Council of League of Nations as, 332; democratic check, subject to, 163; Denmark, in, 179; economic interests in, 312; federalism and, 189, 201; France, in, 205-6; general conclusions concerning, 210; Germany, in, 209-10; Great Britain, in, 189-95; Irish Free State, in, 206-7; Italy, in, 195-6; Japan, in, 198-9; Netherlands, in, 190; Portugal, in, 190; Siéyès, Abbé, and, 188; Smith, Goldwin, and, 188; South Africa, in, 200-1; Spain, in, 199-200; Switzerland, in, 207-9; types of, 68; unitary states, in, 205-7; U.S.A., in, 201-3
- Second Empire, in France, 41, 271
- Secretariat, of League of Nations, 333-4, 338
- Secretary-General, of League of Nations, 331, 335
- Secretary of State, for Indian Affairs, 301
- Seeley, J. R., on American Colonies, 298

- Self-Determination, at end of Great War, 283
- Self-Governing Dominions, British, Cabinet in, 216, 222-6, 228; constitutional amendment in, 148, 153-7; constitutionalism in, 342; constitutions of, 85-7, 139, 153-7; Crown Colonies and, 304; educational conditions in, 183; Great Britain, relation to, 83; Imperial Parliament and 86-7, 110, 139, 153; India, compared with, 301, 303; League of Nations and, 87, 330; Peace Treaties (ending Great War) and, 87; P.R. in, 178; public opinion in, 153-4; Responsible Government in, 70, 135-6, 216, 222-6; Rule of Law in, 33, 72, 266-8; suffrage in, 167
- Senate, Ancient Rome, in, 19-21; Australia, in, 112, 116, 168, 201, 203-4, 224; Belgium, in, 179; Canada, in, 68, 115-16, 196-8; Czecho-Slovakia, in, 234; Egypt, in, 68; France, in, 68, 150-51, 205-6, 227-9; Irish Free State, in, 68, 155, 206-7, 312; Italy, in, 68, 195-6, 312, 322; Separation of Powers and, 215; South Africa, in, 68, 91, 178, 200-1; Spain, in, 68, 199-200, 312; U.S.A., in, 68, 70-71, 104, 109-10, 146, 170-1, 173, 201-3, 240-43, 260, 339; various states, in, 189
- Separation of Powers, Blackstone and Montesquieu, on, 215, 219; constitutionalism and, 214-16, 238; judiciary and, 258-9; Laski, H. J., on, 259
- Septennial Act of 1716, 135, 138
- Serbia (Servia), Constitution of, 233, 298; Independence of, established, 44; Jugo-Slavia, and, 47, 95
- Sheriffs, and summoning of Commons, 190
- Siéyès, Abbé, on Second Chambers, 188
- Simon Commission, see under Commission
- Single transferable vote, and true P.R., 177-81
- Slavery, Abolition of, 105; Ancient Greece, in, 16; U.S.A., in, 106, 158
- Smith, Adam, *Wealth of Nations*, 309
- Smith, Goldwin, on Second Chambers, 188
- Smith, Governor, in Presidential Election, 241-2
- Social Contract Theory, as explanation of origin of state, 34-9
- Socialism, Australia, in, 112; Corporative State in Italy and, 318, 323; Guild—, 313-14; "International" and, 351; Marx, Karl, of, 43, 45, 323; State—, 310-11, 314
- Social Psychology, defined, 1
- Society, Comte, A., on, 127; defined, 2-3; pastoral, 3-4; state and, 3-4, 127; units of association in, 3
- Sociology, defined, 1
- "Solid South," in U.S.A., 175
- Sonderbund*, in Switzerland, 107-8
- South Africa, Anglo-Dutch Wars in, 154; Cabinet in, 225; Constitution of, 90, 139, 154-5, 200, 298; constitutional amendment in, 147, 154-5; Governor-General in, 91, 200; Great Britain, relation to, 297; House of Assembly in, 225; language equality in, 155; legislature in, 147, 200-1; native rights in, 155; P.R. in, 178; Provinces in, 90-91, 154, 200-201; Self-Governing Dominions, other, compared with, 86, 90, 113, 114, 140, 154; Senate in, 68, 91, 178, 200-201; Southern Rhodesia and, 91; South-West Africa and, 91; suffrage in, 167; transferable vote in, 200; Union established, 90, 154; unitary state of, 90-1; U.S.A., compared with, 91
- Southern Confederacy, in U.S.A., 106, 108
- Southern England, in General Election of 1924, 174
- Southern Rhodesia, Referendum in, 91; self-government in, 87, 139, 224; South Africa and, 91
- Southern Silesia, and Plebiscite, 284
- South German States, and Franco-Prussian War, 117
- South-West Africa, and Union of South Africa, 91
- Sovereign, legal, 5, 77; political (constitutional or collective), 5-6, 7, 77; titular, 5
- Sovereignty, alliances and, 79-80; autonomy and, 350; constitutionalism, future of, and, 344-52;

- defined, 5-6, 76; external, 15, 78; federal state in, 62, 80, 201; internal, 76-8; League of Nations and, 339-40; Locke, J., and, 36; popular, 11, 36, 76, 286; Renaissance and, 27-29; Rousseau and, 36, 76, 286; specialisation of function and, 214; state rights and, 76-8; unitary state in, 80-82
- Soviet, in Russia, 47, 292, 315-17
- Spain, Constitution of, 11, 199, 312; constitutionalism and, 25, 27, 342; Cortes in, 25; dictatorship in, 11, 199, 298; Directory in, 199; Great Britain, compared with, 199; illiteracy in, 183; Italy, compared with, 251; Latin America and, 120, 121; legislature in, 200; nationalism in, 25; Renaissance and, 27; Senate in, 68, 199-200, 312; suffrage in, 166; U.S.A., war with, 300
- Spanish Armada, effect of, on despotism in England, 31
- Spartacists, Revolution of, in Germany, 230
- Speaker of House of Commons, and Money Bills, 137-8
- Speaker's Conference, see under Conference
- Spencer, H., as philosophical anarchist, 12
- Star Chamber, as administrative court, 272
- State, Common Law, 72; constitutional, defined, 11; defined, 3-4, 127; Prerogative, 72; Society and, 3-4, 127; types of, 60-63
- State Assembly, in Esthonia, 288, 291
- States-General in France, first meets, 25; period of eclipse, 29; revived, 38
- Statute-Book, in Britain, 84, 136, 137; convention of Constitution and, 136-7; explained, 5; -law, 127, 133
- Statuto, Constitution of Sardinia and of Italy, 41, 93-4, 125, 141-2
- Stephen, King, chaos in England under, 133
- Stephen, L., and public opinion, 77
- Stuarts, accession of, 84; administrative system under, 272; Divine Right and, 36; Parliament and, 31-2, 134; religious rights under, 164
- Sudan and Suez, British interests in, 300
- Suffrage, adult, 168-72; backward states, in, 183-4; democracy and, 167; extension of, 163, 165-6; Finland, in, 235; France and, 166-7; Germany, in, 172, 230, 232; Great Britain, in, 33, 66, 135, 167, 168-70; manhood, 166-8; post-War States, in, 47; representation, and, 183-5; types of, 66-7; U.S.A., in, 160, 167, 170-1
- Sultan, in Turkey, 252
- Supreme Court; see Judiciary
- Suzerainty, Russian, in Finland, 143, 235
- Sweden, constitutional amendment in, 147; constitutionalism in, 342; Norway, united with, 78; P.R. in, 179, 182
- Switzerland, Administrative Law in, 271; Australia, compared with, 110, 207-8; Austria, compared with, 107; Canada, compared with, 113; cantons in, 98, 107, 109, 110, 147, 157, 179, 207-8, 289-90; Constitution of, 41, 108, 109, 125, 157-8, 208, 244-6; constitutional amendment in, 147-8, 157-8; constitutionalism in, 342; Council of States (*Ständerat*) in, 68, 109, 157, 189, 207-9, 244; democracy in, 164; executive in, 110, 208-9, 238-9, 244-6; Federal (or National) Assembly in, 157, 244-6, 271; Federal Council in, 244-6, 271; federalism in, 61, 99, 107-10; France, compared with, 244, 246; Germany, compared with, 120, 207-8; Initiative (Popular) in, 157, 289-90; judiciary in, 102, 110, 260, 264; languages in, 108; legislature in, 108, 157, 208-9, 244-6; Napoleon and, 107; nationalism in, 109; P.R. in, 179; Recall in, 292; Referendum in, 109, 157, 209, 286-8; "reserve of powers" in, 109; suffrage in, 166; Turkey, compared with, 253; voting age in, 167; U.S.A., compared with, 108-10, 207-8, 244-6
- Sydenham, Lord, Governor-General of Canada, 223-4

- Syndicalism, coercion and, 311 ;
 France in, 311 ; Guild-Socialism,
 compared with, 314 ; Italy, in,
 247-8, 317 ; National Fascist,
 317-24 ; social organisation, con-
 ception of, under, 12
 Syndicate, in Italy, 319, 321, 322
 Syria, French mandate in, 300
- Tasmania, P.R. in, 178 ; Responsible
 Government granted to, 224
 Tennessee State, and U.S. Supreme
 Court, 106
 Teutonic invasions, Britain, of, 83 ;
 Roman Empire, of, 23
 Theodoric the Ostrogoth, and Italy,
 93
 Thiers, L. A., Maine quotes, 226 ;
 Third Republic in France and,
 149-50
 Thrace, Turks recover, 252
 Three Estates, in Mediæval times,
 189-90
Times, quoted on League of Nations,
 332
 Tocqueville, A. de, and English
 Constitution, 124, 126
 Tories, Reaction after Napoleonic
 Wars and, 309 ; Treaty of Utrecht
 and, 192
 Trade Union, Great Britain, move-
 ment in, 317 ; Italy, in, 319, 323 ;
 unit of association, as, 3
 Traill, H. D., on Cabinet, 219
 Transvaal, as Province in Union of
 South Africa, 90
 Transylvania, incorporation of, with
 Rumania, 283-4
 Treaties, constitutional significance
 of, British Constitution and, 133,
 155 ; Great War, ending, 47-8,
 87, 203, 233, 252, 283-5, 330 ;
 Locarno, 339 ; minorities and,
 180 ; Napoleonic Wars, ending,
 40 ; Southern Ireland, with, 155 ;
 U.S. Senate and, 203 ; Utrecht,
 192 ; Westphalia, 107
 Trentino, incorporation with Italy,
 283
 Triennial Act, of 1694, 138
 Triple Alliance, Italy and, 78
 Trusts, in U.S.A., 317-18
 Tudors, in England, administrative
 system under, 272 ; Council
 under, 31, 217 ; despotism of,
 30-1, 134 ; ecclesiastical su-
 premacy of, 29 ; extinction of
 line, 84 ; Parliament and, 134
 Turkey, Abdul Hamid II, under,
 44-5 ; Cabinet in, 253 ; Caliphate
 of Sultan of, 252 ; Constantinople,
 and, 23, 252 ; Constitution of,
 44-5, 252-4, 299 ; dictatorship
 in, 254, 298 ; disintegration of,
 47, 300 ; executive in, 70, 238,
 239, 252-4 ; France, compared
 with, 253 ; Grand Assembly in,
 253-4 ; Great Britain, compared
 with, 253 ; legislature in, 66,
 252-4 ; Mustapha Kemal and,
 253-4 ; non-Turkish peoples in,
 46 ; P.R. in, 179 ; President in, 70,
 252-4 ; Republic in, 253-4 ; Revo-
 lution in, 44, 252 ; Sultanate of,
 252 ; Switzerland, compared with,
 253 ; Thrace, recovers, 252 ; uni-
 cameral system in, 187 ; U.S.A.,
 compared with, 243, 254 ; voting
 age in, 167
- Ulster ; see Northern Ireland
 Uni-cameral System, Europe,
 various states, in, 187-8 ; general
 conclusions concerning, 210 ;
 House of Lords and, 194
 Unitary State, Canada, abandoned
 in, 114-15 ; defined, 60 ; essential
 quality of, 80-2 ; examples of,
 60 ; federal state, compared with,
 60-3 ; legislature in, 130
 United Kingdom ; see Great Britain
 United States of America, Australia,
 compared with, 110-13, 201, 204 ;
 Canada compared with, 113-15,
 117, 238 ; Collectivism in, 272-3 ;
 Colonies (original) in, 79, 158 ;
 Congress in, 70, 104, 158-60,
 171, 174-5, 203, 240-4, 261, 346 ;
 Constitution of, 63-5, 74, 103-4,
 128, 131, 146, 158-60, 202, 239-43,
 269, 298 ; constitutional amend-
 ment in, 109, 110, 158-60, 239 ;
 Convention of Philadelphia and,
 104, 159 ; Declaration of Inde-
 pendence and, 37-8, 159 ; edu-
 cational conditions in, 183 ;
 electoral system in, 170-1, 175 ;
 emergence of, 37, 125, 158 ;
 executive in, 70-1, 159-60, 203,
 216, 238 ; Fathers of Constitution
 of, 38, 63, 215, 239 ; federalism
 in, 38, 61, 98, 103-7, 349 ;
 Finland, compared with, 235 ;

- France, compared with, 282-3 ; fundamental law in, 146 ; general elections in, 174-5 ; Germany, compared with, 119, 120, 207 ; Great Britain and, 158-9 ; House of Representatives in, 70, 104, 159, 170-1, 173-5, 203, 240-3 ; Initiative (popular) in, 289-92 ; Italy, compared with, 94, 243, 251 ; judiciary in, 9, 71, 72, 102-3, 105-6, 109-10, 159, 260-1, 273 ; Latin America and, 121, 216, 238 ; League of Nations and, 203, 331, 339 ; local government in, 63 ; parties in, 174-5, 180 ; Philippines and, 300 ; P.R. in, 178, 180 ; President of, 8, 70-1, 104-5, 159-60, 203, 226, 238-44 ; Presidential Election in, 64, 170-1, 239-43, 282-3 ; President's Cabinet in, 237 ; Prohibition in, and Constitution, 160 ; Recall in, 291-2, 293, 295 ; Referendum in, 109, 148, 185, 286-8, 292-5 ; "reserve of powers" in, 101, 104, 159 ; Rule of Law in, 33, 72, 268-9 ; Senate in, 68, 70-71, 104, 109-10, 146, 159-60, 170-1, 173, 201-3, 240-3, 261, 339 ; single-member constituency in, 172-5 ; Slavery in, 106, 158 ; South Africa, compared with, 91 ; States of, 62, 148, 159-60 ; suffrage in, 160, 167, 170-1 ; Supreme Court, see under judiciary ; Switzerland, compared with, 108-10, 207-8, 244-6 ; Turkey, compared with, 243, 254 ; Vice-President of, 239-42 ; voting age in, 167 ; "voting by ticket" in, 168
- Upper House ; see Second Chamber
- Veto, House of Lords, of, 135, 137-8, 193 ; Imperial Parliament, of, and Dominions, 139-40 ; Irish Senate, of, 207 ; Reichsrat in Germany, of, 209-10 ; Roman Consuls, of, 19 ; Turkish President, of, 253 ; U.S. President, of, 253
- Vice-President, in U.S.A., 239-42
- Viceroy ; see Governor-General
- Victor Emmanuel, and Italian Unity, 93
- Victoria, Queen, Sovereign of India, 301
- Villari, L., on Italian Constitution, 142-3
- Voting, age, in various states, 167-8 ; compulsory, 168 ; general ticket (*scrutin de liste*) in France, 175-6 ; Mill, J. S., on, 183 ; open, 168 ; plural, in Britain, 169 ; preferential, 179, 200 ; secret, 105, 135, 168 ; ticket, by, in U.S.A., 168, 176 ; University Graduates in Britain, of, 168-9, 178, 180
- Wales, Devolution and, 347 ; General Election of 1906, and, 173 ; Statute of, 84
- Walpole, Sir R., and the Cabinet, 217, 219, 256
- Wars, constitutional significance of, American Independence, of, 37, 159, 298 ; Austro-Prussian, 94, 117 ; Balkan, 45 ; Civil in America, 105, 106-7, 115 ; Civil in England (under Charles I), 31-2, 35, 134, 164, 218, 272 ; Eighteenth Century, of, 309 ; Franco-Prussian, 94, 117, 149, 152 ; Great (1914-18), 45-8, 89, 93, 117-18, 138, 142-3, 151-2, 169, 171, 179, 180, 182, 190, 200, 203, 230, 232-6, 247, 252, 283-5, 298-300, 302, 314-15, 326, 328, 339, 342, 350 ; Hundred Years', 25 ; Ireland, in, 155 ; Napoleonic, 39-40, 309, 327 ; Peloponnesian, 17 ; Roses, of, 30, 135 ; Russo-Turkish, 44 ; Seven Years', 37, 301 ; South African (Boer), 154 ; Spanish-American, 300
- Warwickshire, in General Election of 1906, 173
- Washington, G., First President of U.S.A., 240
- Wessex, House of, in England, 83
- Whigs, Revolution of 1688 and, 35-6 ; Treaty of Utrecht and, 192 ; Walpole and, 217, 219
- Wilhelm II, abdication of, 230 ; Bismarck and, 70 ; democracy and, 352
- Wilkes, John, judicial decision in favour of, 32-3, 267
- William I, feudalism and, 133 ; Great Council and, 217
- William III, Cabinet and, 218 ; Constitution, growth of, and, 133 ; Revolution of 1688 and, 36

- William of Ockham, and Conciliar Movement, 26
- Willoughby, W. W., on differentiation of states, 58
- Wilson, Woodrow, American Articles of Confederation, on, 103; Congress in U.S.A. and, 242; Council of States in Switzerland, on, 208; Germany, and, 70, 230; League of Nations, and, 203, 330; legislation in Britain and U.S.A., on, 105; Peace Programme in 1918 of, 283; President, elected as, 241; Russian Provisional Government, and, 326; Senators in U.S.A., on, 202; State defined by, 4
- Woman Suffrage Campaign, Great Britain, in, 169; U.S.A., in, 171
- Woolsack, and change of government, 260

